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# “THINGS HAVE CHANGED IN THE SOUTH”

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ALABAMA’S RESPONSE TO THE  
MISLEADING AND MISGUIDED ATTEMPT  
TO REIMPOSE PRECLEARANCE OVER  
STATE ELECTION LAWS



**This report was prepared by the  
Office of the Attorney General of the State of Alabama  
for the Subcommittee on the Constitution of the  
United States Senate Committee on the Judiciary.**



***September 22, 2021***

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*Things have changed in the South.*

—U.S. Supreme Court, 2009\*

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\* This declaration was made by the near-unanimous majority of the United States Supreme Court in the case of *Northwest Austin Municipal Utility District No. One v. Holder*, 557 U.S. 193, 202 (2009). Only one member of the Court, Justice Clarence Thomas, did not join the majority, although he too agreed with the substance of this statement. *See id.* at 226–27 (Thomas, J., concurring in the judgment in part and dissenting in part).

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## Executive Summary

In 1965, Congress responded to the persistent and widespread denial of voting rights in Alabama and elsewhere by enacting the Voting Rights Act. “[T]he unremitting attempts by some state and local officials to frustrate their citizens’ equal enjoyment of the right to vote,” justified a novel and drastic remedy—the “suspension of new voting regulations pending preclearance” by the federal government, which marked “an extraordinary departure from the traditional course of relations between the States and the Federal Government.”<sup>1</sup>

The question before Congress now is whether that “extraordinary departure” can still be justified. And the Southern Poverty Law Center has demonstrated that the answer is “No.”

In August 2021, the SPLC submitted a report to the House Committee on the Judiciary entitled *Selma, Shelby County, & Beyond*.<sup>2</sup> The report spans 117 pages and includes hundreds of pages more of declarations from Alabama voters all in support of one claim: that preclearance is again justified because Alabama’s goal today is “to establish white supremacy in this State.”<sup>3</sup>

Though the report was compiled by one of the largest, most well-known, and best-funded<sup>4</sup> civil rights organizations in the nation, with contributions from other groups including the Leadership Conference on Civil & Human Rights and the Brennan Center for Justice, the report comes nowhere near showing the sort of “pervasive,” “flagrant,” and “rampant” discrimination that justified preclearance decades ago.<sup>5</sup> Quite the contrary. The report’s repeated reliance on misleading narratives, glaring omissions, and easily debunked contentions demonstrate that there simply is no legitimate case to be made for preclearance.

To be sure, some of the declarants witnessed honest mistakes by poll workers or boorish behavior by other voters. Others experienced inconvenience when the system did not work as designed or when life—or COVID-19—made voting more difficult than usual. And to be sure, the State should, and will, continue to work to make voting easy and to correct mistakes that happen along the way. But by any fair measure, the incon-

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<sup>1</sup> *Presley v. Etowah Cty. Comm’n*, 502 U.S. 491, 500–01 (1992).

<sup>2</sup> See Southern Poverty Law Center, *Selma, Shelby County, & Beyond: Alabama’s Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & the Critical Need to Restore the Voting Rights Act*, Report to the H. Comm. on the Judiciary (Aug. 16, 2021) (“SPLC Report”), available at <https://perma.cc/R596-VXAL>.

<sup>3</sup> SPLC Report at 1.

<sup>4</sup> The SPLC’s recent audited financial statement reports that as of October 31, 2020, the SPLC and its affiliated SPLC Action Fund held assets valued at over **\$616 million**, and in FY 2020 spent over **\$97 million**. See Southern Poverty Law Center, Inc. and SPLC Action Fund October 31, 2020 Consolidated Financial Statements, available at <https://perma.cc/E3C5-Z6BF>. Additionally, the Brennan Center for Justice—one of eight groups listed as contributors to the SPLC Report—held more than **\$96 million** in assets in 2020 and spent over **\$30 million** that fiscal year. See William J. Brennan Jr. Center for Justice, Inc. and Affiliate, Financial Statements and Report of Independent Certified Public Accountants, June 30, 2020 and 2019, available at <https://perma.cc/WB6W-B56H>.

<sup>5</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 308, 315, 331 (1966).

veniences catalogued by the SPLC’s report are a far cry from the “insidious and pervasive evil,” the “unremitting and ingenious defiance of the Constitution”<sup>6</sup> that justified the original preclearance regime.

Instead of glaring disparities between black and white voters in Alabama (in 1969, for instance, only 19.3% of black Alabamians were registered to vote, compared to 69.2% of whites), we are left with the fact, unmentioned by the SPLC, that in 2018 Alabama had the **second highest black voter registration rate in the country**—behind Mississippi.<sup>7</sup> And instead of evidence of poll taxes and literacy tests, we are left with declarations like John’s, which the SPLC submits as evidence of Alabama’s racist present:<sup>8</sup>

I am a general contractor. Since I am frequently out on the job and do not know how long my day will be or where I’ll be, I go to vote first thing in the morning when the polls open up. I go then so I do not have to wait in a long line more than 30 minutes. Usually first thing it’s about 15 minutes.

I have never voted by absentee ballot. I do not trust the absentee ballot system. I always vote in person.

I have never been told I was not eligible to vote, but in 2018, the poll worker said I was at the wrong polling place because they could not find my name in the voting rolls. Turned out it was someone new who was working at my polling place; this happens all the time in recent years. It was not the usual people who would know me. I insisted they check again, and after a bit of searching, they found my name and allowed me to vote.

One thing I do not like, it is the straight party voting. In the last 10 years, the ballots seem like they are made more confusing. They keep changing it, so it is easy to vote for the wrong candidate. It looks like you have to mark your party preference at the top, but if you do, then you can’t choose a candidate in each race. You actually can mark a candidate for each race, but only if you do not indicate your party preference at the top. You have to read the ballot very carefully to figure this out, to avoid making a mistake. . . .<sup>9</sup>

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<sup>6</sup> *Id.* at 309.

<sup>7</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2018*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018, <https://www.census.gov/topics/public-sector/voting/data/tables.html>. The comparisons are drawn from looking at the “percent registered” of total population for the “black alone” number for each State. If the rate is measured as percent registered among citizens, Alabama’s rate is still eighth highest among the thirty-five States reporting sufficient data, and under either metric, Alabama’s rate of voter registration is higher than the national average for black Americans.

<sup>8</sup> See SPLC Ex. 24.

<sup>9</sup> *Id.*



That’s it. There is no bombshell hidden in part of the declaration not reproduced; this is the meat of it. Nor is John’s declaration an outlier. This is the best (or worst) that one of the best-capitalized civil rights groups in the country (and one based in Alabama) could muster to support its argument that Alabama’s goal “remains unchanged: to establish white supremacy in this State” and “perpetuate majority white control.”<sup>10</sup> Damning rhetoric—and a damning lack of evidence to support it.

This response endeavors to examine some of the evidence touted by the SPLC report, to provide some of the facts it omits, and to correct the factual record where the report gets it wrong (which is often). The response is not comprehensive; much more could be said to correct the misleading picture painted in the report. But the hope is that facts still matter, and that those facts—today’s facts—will demonstrate that preclearance is not needed in Alabama. Finally, if this is the best that the Alabama-based SPLC can muster to support imposing preclearance on Alabama, then the broader push for reimposing that regime anywhere should be called into question.

The response begins with history and brings us to the present. The Alabama of today is not the Alabama of 1965—or 1970, 1975, or 1982, when the VRA was enacted and reenacted. Again, in 1969, only 19.3% of blacks in Alabama were registered to vote, compared to 69.2% of whites. For the last decade (and more), Alabama has largely achieved racial parity in voter registration and turnout rates. In 2018—five years after the Supreme Court’s decision in *Shelby County v. Holder*<sup>11</sup>—Alabama trailed only Mississippi for the highest black voter registration rate in the country.<sup>12</sup> Two years before that, black voters in Alabama turned out at higher rates than white voters by 4.6%.<sup>13</sup> In Connecticut, by comparison, 61% of whites voted compared to just 47.9% of black voters—a gap of 13.1%.<sup>14</sup> The SPLC’s report mentions none of this.

Next, the response turns to Alabama’s voter ID laws, which—despite the report’s mantra that voter fraud is a myth—were enacted as a response to real, honest-to-goodness, documented cases of voter fraud that led to actual arrests and overturned real elections in Alabama. In 2013, for example, four campaign volunteers for a Dothan city commissioner were arrested for voter fraud; their candidate had lost the in-person vote 154 to 109, but (thanks to their “volunteering”) received 131 of the 140 absentee votes. In 2006, a black candidate in Mobile nearly lost his election for State House because of voter fraud. Two years before that, a mayoral election in Greensboro was overturned because of voter fraud. The list goes on. And all too often, the victims of

<sup>10</sup> SPLC Report at 1 (internal quotation marks omitted).

<sup>11</sup> 570 U.S. 529 (2013).

<sup>12</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2018*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018, <https://www.census.gov/topics/public-sector/voting/data/tables.html>. The comparisons are drawn from looking at the “percent registered” of total population for the “black alone” number for each State.

<sup>13</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2016*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2016, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

<sup>14</sup> *Id.*

voter fraud have been black voters and black candidates whose right to vote or hold office were stolen from them—yet one searches the SPLC report in vain for any mention of the rights of *these* Alabamians.

Alabama’s voter ID laws are also easy to comply with—a fact the State knows because it successfully defended the laws in litigation for over two years, and in that entire time the challengers **could not produce one single voter** in the State who lacked an ID and could not get one. The SPLC fares no better. Alabama makes photo IDs available for free, and the Secretary of State’s Mobile Unit will literally drive to a homebound voter’s house to provide an ID if requested. The SPLC’s claim that obtaining a photo ID is unduly burdensome for older, lower-income, and rural voters has been thoroughly debunked in federal court.

The SPLC also distorts reality when it comes to polling places. For one, the report says that “the Secretary of State’s office has no centralized database to document precinct closures,” so “voters must rely on word-of-mouth” to learn “information as basic as confirming where to vote.”<sup>15</sup> This is false. If one types “find polling place Alabama” into Google, the first link that appears is the Secretary of State’s VoterView site, which allows Alabamians to find their polling place by entering their name and date of birth. The site is updated regularly and tells a voter exactly where to go to vote.

Next, the response addresses the SPLC’s attack on Alabama’s system of in-person voting and its requirements for absentee voting. For in-person voting, the SPLC wishes Alabama offered curbside voting to help voters with disabilities, but Alabama already accommodates such voters by allowing them to move to the front of the line or vote absentee. As for absentee voting, the report pretends that asking voters to provide a copy of their photo ID and to have two witnesses or one notary public sign their ballot affidavit raises insurmountable barriers to voting—even though voters have nearly two months before Election Day to meet these minimal requirements. The SPLC may view Alabama voters as helpless, but the State knows its residents can accomplish basic tasks like making one photocopy when given months to do so.

The SPLC’s report also faults Alabama for following federal law when it comes to maintaining its voter registration rolls. The National Voter Registration Act requires each State to implement a systematic process for removing from the voter rolls individuals who are no longer registered to vote—people who have moved or died. Alabama does this every four years by attempting to contact registered voters; if, after multiple attempts, the voter cannot be located, the voter is placed on “inactive status.” That means that when the voter next goes to vote she will need to fill out a form (given to her by a poll worker) and then can cast a regular ballot then and there. But if instead another four years go by without any word from the voter, the voter is at that point removed from the voter rolls. The system is hardly Jim Crow reincarnated—

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<sup>15</sup> See SPLC Report at 35–36.

which the SPLC’s report confirms because it does not identify a single voter who was unable to cast a ballot because he or she had been removed from the voter rolls.

Up next is felon disenfranchisement and re-enfranchisement. Like many States, Alabama provides that individuals who commit certain felonies forfeit the right to vote. In 2017, the State **narrowed** which felonies qualify and specifically listed every crime that carries with it the loss of voting rights. The crimes are what one might expect—murder, rape, terrorism, trafficking large quantities of drugs, child sex acts, forgery, kidnapping, etc. Many felons can regain the right to vote once they serve their sentence and pay any fines or other monies ordered by the sentencing court. Certain felons—those who committed treason, murder, rape, and various child pornography and child sex crimes, for instance—are ineligible for this voter-restoration process. While the SPLC claims that Alabama’s felon-disenfranchisement laws are racist and unconstitutional, earlier, more stringent versions of the laws were *precleared by the Department of Justice* in 1996. Unless one believes the Clinton Administration was in on the ruse, these longstanding laws, which have only been narrowed in recent years, offer no reason to reenact preclearance.

The response also discusses Alabama’s compliance with the Voting Rights Act. Between 1990 and 2008, Alabama and its sub-jurisdictions submitted 6,126 preclearance requests to the Department of Justice. Yet between 1998 and 2008, the DOJ interposed just four objections to any change originating in Alabama. These are the objections the SPLC discusses in its report. Remarkably, however, the SPLC neglects to mention that one of the objections was later withdrawn by the DOJ. There has not been a sustained objection to a statewide change in Alabama since 1994. The VRA cases cited by the report likewise fail to show that Alabama has returned to its wayward ways. *White v. Alabama*<sup>16</sup> did not involve a final judgment finding racial discrimination, but a collusive scheme to obtain unprecedented and unlawful relief by the plaintiffs; the State was eventually vindicated. *Alabama Legislative Black Caucus v. Alabama*,<sup>17</sup> though eventually ending in a ruling that the drawing of certain legislative districts in Alabama violated federal law, involved a novel issue of law that resulted in the Supreme Court holding for the first time that the voting opportunity of black residents in a voting district was not diminished if the district’s black voting strength was lowered but black voters remained in the majority. And *People First v. Merrill*<sup>18</sup> concerned the application of Alabama’s election laws during COVID-19, and the district court’s injunction was stayed by the Supreme Court so Alabama could enforce its laws in full. The district court even “emphasize[d] that its decision does not undermine the validity of the Challenged Provisions outside of the COVID-19 pandemic,”<sup>19</sup> so the de-

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<sup>16</sup> 74 F.3d 1058 (11th Cir. 1996).

<sup>17</sup> 575 U.S. 254 (2015).

<sup>18</sup> 491 F. Supp. 3d 1076 (N.D. Ala. 2020), *judgment stayed*, 141 S. Ct. 25 (2020).

<sup>19</sup> *Id.* at 1093.

cision provides zero support for enacting a voting law that is to apply in non-pandemic times.

In sum, the SPLC’s report is certainly full of sound and fury, but it signifies nothing. Heavy on rhetoric and light on evidence, the report misleads and mischaracterizes in support of its claim that the Alabama of yesterday is the Alabama of today—that Jim Crow is ever lurking, waiting for the federal government to turn its eye elsewhere. The facts portray a wholly different scene, making clear that voting is easy for all Alabamians, of any race.

The SPLC’s nearly 400-page compendium, however, is not without value. It shows that even when some of the best capitalized civil rights groups in the country take aim at Alabama to justify reimposing preclearance, they miss the mark by a mile. Congress should recognize as much and reject these unsupported calls for the reimposition of preclearance.

## I. The Alabama of Today Is Not the Alabama of 1965— or 1970, 1975, or 1982

There is no denying Alabama’s shameful history when it comes to voting rights.<sup>20</sup> George Wallace and Bull Connor used to be in Alabama, and Selma and the Edmund Pettus Bridge still are. These people and places were particularly responsible for the enactment of the Voting Rights Act of 1965 and its preclearance mechanism. As the Supreme Court noted in 1966, “[d]uring the hearings and debates on the Act, Selma, Alabama, was repeatedly referred to as the pre-eminent example of the ineffectiveness of existing legislation.”<sup>21</sup> Prior to the Act’s passage, “there were four years of litigation by the Justice Department and two findings by the federal courts of widespread voter discrimination” in the county encompassing Selma, “[y]et in those four years, [black] registration rose only from 156 to 383” in a county of approximately 15,000 black Alabamians of voting age.<sup>22</sup> Statewide, only 19.3% of blacks were registered to vote, compared to 69.2% of whites.<sup>23</sup> Voter discrimination occurred “on a pervasive scale,” thus requiring the “stringent” and “potent” remedy of the Voting Rights Acts.<sup>24</sup>

When Congress reenacted the preclearance provision in 1970 for a “cooling off period” of another five years,<sup>25</sup> registration and turnout rates among black voters in Alabama still lagged far behind corresponding figures for whites. In the summer of

<sup>20</sup> See generally Br. of State of Alabama as *amicus curiae*, *Shelby County v. Holder*, No. 12-96 (U.S. Jan. 2, 2013) [“Shelby County Brief”]; Br. of Hon. Bob Riley, Gov. of Ala. as *amicus curiae*, *Nw. Austin Municipal Utility Dist. No. 1 v. Holder*, No. 08-322 (U.S. Feb. 26, 2009) [“NAMUDNO Brief”].

<sup>21</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 314 (1966).

<sup>22</sup> *Id.* at 314–15.

<sup>23</sup> *Shelby County v. Holder*, 570 U.S. 529, 548 (2013).

<sup>24</sup> *Katzenbach*, 383 U.S. at 308, 315, 337.

<sup>25</sup> See H.R. Rep. No. 109-478, at 9 (2006) (quoting H.R. Rep. No. 91-397, at 4 (1970)).

1970, the state Democratic Party nominated George Wallace, who had been governor when Congress passed the VRA in 1965, for what would become his second term. Alabama still did not have a single black legislator. And a Justice Department investigation found that Alabama agencies had passed over 49 black applicants in favor of “lower-ranking white applicants.”<sup>26</sup> As a result, in a State that was 25% black, black Alabamians held only 3.1% of government jobs.

Congress renewed the VRA in 1975 for another seven years. Although some things had changed by then, the record from Alabama largely still supported the extension. As the Supreme Court would later conclude, the extension “was necessary to preserve the ‘limited and fragile’ achievements of the Act and to promote further amelioration of voting discrimination.”<sup>27</sup> In Alabama, black voter registration had risen from 19.3% in 1965 to 57.1% in 1975, but still trailed white voter registration by 23.6%.<sup>28</sup> The composition of state government also remained largely unchanged. George Wallace was still at the helm, and 11 legislators who had been in office in 1965 still held seats there. Only two state senators were black, and only 13 representatives in the State House were.<sup>29</sup>

Seven years later, Alabama had made much progress, but still not enough; Congress again renewed the VRA—this time for 25 years. George Wallace was elected to his fourth term of office in the fall of 1982 (though by then he had renounced his segregationist views); the discrepancy between black and white voter registration and turnout rates was still above the average for non-southern states; and the Alabama legislature had gained just one additional black senator and no more House members.<sup>30</sup>

When Congress next revisited the VRA in 2006, things in Alabama had changed—dramatically. By then, the important indicia that justified the potent medicine of pre-clearance showed that Alabama had largely been cured. In every year since 1990, black voters had registered and voted in larger percentages in Alabama than in States outside the South. In 2004, the gap between white voter registration and black voter registration was 0.9%—with 73.8% of whites and 72.9% of blacks registered to vote in Alabama.<sup>31</sup> (That year in New York, by comparison, saw 64.1% of whites and just 50.5% of blacks register to vote—a 13.6% racial gap.<sup>32</sup>) Also long gone were Governor Wallace and Alabama’s all-white legislature. Black legislators held seats in the State

<sup>26</sup> *United States v. Frazer*, 317 F. Supp. 1079, 1086-87 (M.D. Ala. 1970).

<sup>27</sup> *City of Rome v. United States*, 446 U.S. 156, 182 (1980).

<sup>28</sup> See S. Rep. No. 94-295, at 6 (1975).

<sup>29</sup> See Shelby County Brief at 9 (comparing *Roster of the Senate of Alabama*, Ala. S. J. 2136-38 (1965), and *Roster of the House of Representative of Alabama*, Ala. S. J. 2139-42 (1965), with *Roster of the Senate of Alabama*, Ala. S. J. 3753-54 (1975), and *Roster of the House of Representatives of Alabama*, Ala. S. J. 3757-62 (1975)).

<sup>30</sup> NAMUDNO Brief at 22a (reproducing Bullock-Gaddie Table 5).

<sup>31</sup> *Id.* at 548.

<sup>32</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2004*, Table 4a: Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2004, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.



House and State Senate at percentages that were roughly commensurate with their share of the total population, representing 23% of the Senate and 26% of the State House—numbers that are roughly the same today.<sup>33</sup> By 2003, blacks comprised 39% of Alabama’s governmental workforce—a figure more than 10% greater than their representation in the general population.<sup>34</sup>

Based on this progress—in Alabama and the other States covered by preclearance—all nine members of the Supreme Court recognized in 2009 that “[t]hings have changed in the South.”<sup>35</sup> The Court wrote: “Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.”<sup>36</sup>

Progress has also continued since then. While Alabama does not claim that it has eliminated all race-relations issues within its borders, it has largely achieved parity in this area with other States that lack its history of turmoil. The race issues Alabama still grapples with are similar to the ones that governments throughout the nation are trying to address; no longer are they the distinct problems that justified Congress’s “uncommon exercise of congressional power” in 1965.<sup>37</sup>

## II. Alabama’s Voter Registration and Turnout Rates Compare Favorably to Those of Other States—Including States Never Subject to Preclearance

While the SPLC’s report portrays Alabama as backsliding since the Supreme Court’s decision in *Shelby County*, the numbers show that Alabama is doing just as well—and often better—than many States who were never covered by Section 5’s preclearance requirement. **In 2018, five years after *Shelby County*, Alabama had the second-highest black voter registration rate in the entire country—a fact the SPLC leaves out**

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<sup>33</sup> NAMUDNO Brief at 22a (reproducing Bullock-Gaddie Table 5). As of September 16, 2021, 20% of the State Senate and 26% of the State House are composed of black members. See Alabama Legislature Senators, <http://www.legislature.state.al.us/aliswww/ISD/Senate/ALSenators.aspx>; Alabama Legislature House of Representatives, <http://www.legislature.state.al.us/aliswww/ISD/House/ALRepresentatives.aspx>.

<sup>34</sup> See *United States v. Flowers*, 444 F. Supp. 2d 1192, 1193 (M.D. Ala. 2006).

<sup>35</sup> *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009) (majority opinion); accord *id.* at 226–27 (Thomas, J., concurring in the judgment in part and dissenting in part).

<sup>36</sup> *Id.* at 202 (majority opinion); accord *id.* at 226–27 (Thomas, J., concurring in the judgment in part and dissenting in part).

<sup>37</sup> *Katzenbach*, 383 U.S. at 334.

of its report.<sup>38</sup> Only Mississippi had a higher black voter registration rate that year—a fact the SPLC also leaves out of its report on voting rights in that State.<sup>39</sup>

Voter registration and turnout rates for 2016 are likewise absent from the SPLC’s report.<sup>40</sup> The data show why: **In 2016, black voter turnout in Alabama surpassed white voter turnout by 4.6%.**<sup>41</sup> Nationally, there was a 2.3% gap going the other way—more white voters than black voters as a percentage of the population—but in Alabama 60.2% of blacks voted compared with 55.6% of whites. By comparison, in New Jersey (which had not been covered by Section 5) 56.6% of whites and just 48.7% of blacks voted in the November 2016 election—a racial gap of 7.9%.<sup>42</sup> In Connecticut, the gap was 13.1%.

**Voter Turnout<sup>43</sup>**

	2016			2018			2020		
	White	Black	Gap	White	Black	Gap	White	Black	Gap
National	58.2	55.9	2.3	51.1	48	3.1	63.7	58.7	5
<b>Alabama</b>	<b>55.6</b>	<b>60.2</b>	<b>-4.6</b>	<b>50.1</b>	<b>49.4</b>	<b>0.7</b>	<b>62</b>	<b>54.8</b>	<b>7.2</b>
California	50.5	46.3	4.2	46.6	48.8	-2.2	57.6	60.3	-2.7
Colorado	66.6	67	-0.4	55.9	27.8	28.1	65.1	51.6	13.5
Connecticut	61	47.9	13.1	51.3	39	12.3	63.4	56.8	6.6
Illinois	60.6	57.1	3.5	50.3	54.2	-3.9	64.2	60.7	3.5
Michigan	63.6	59.9	3.7	59.5	54.2	5.3	66.1	61.5	4.6
New Jersey	56.6	48.7	7.9	51.2	46.6	4.6	72.3	60.9	11.4
New York	54.5	51.7	2.8	46	46	0	61.1	57.1	4

The 2018 midterm elections tell a similar story. Nationally, the racial gap in voter registration rates that year was 3.5%, with more whites than blacks voting as a per-

<sup>38</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2018*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018, <https://www.census.gov/topics/public-sector/voting/data/tables.html>. The comparisons are drawn from looking at the “percent registered” of total population for the “black alone” number for each State.

<sup>39</sup> See Southern Poverty Law Center, *Freedom Summer, Shelby County, & Beyond: Mississippi’s Continued Record of Racial Discrimination in Voting, The Tireless Mississippians Who Push Forward, & The Critical Need to Restore the Voting Rights Act*, Report to the H. Comm. on the Judiciary (Aug. 16, 2021).

<sup>40</sup> At page 93 of its report, the SPLC provides voter registration and turnout rates in Alabama for 2004, 2012, 2018, and 2020, but not for 2016.

<sup>41</sup> U.S. Census Bureau, *Voting and Registration in the Election of November 2016*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2016, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

<sup>42</sup> *Id.*

<sup>43</sup> Data are drawn from the U.S. Census Bureau’s Table 4b showing “Reported Voting and Registration by Sex, Race and Hispanic Origin, for States,” for each election year. See generally <https://www.census.gov/topics/public-sector/voting/data/tables.html>. The numbers here reflect the “percent registered (Total)” of total population for the “black alone” and “white alone” figure for each State.

centage of population. In Alabama, the gap was just 0.8%, with 68% of whites compared to 67.2% of blacks registering to vote.<sup>44</sup> For comparison, in Colorado the gap was 22.8%; in Connecticut, 14.2%; in Michigan, 8.6%; and in New Jersey, 3.8%.<sup>45</sup> Turnout was roughly the same—a national 3.1% gap compared to 0.7% in Alabama. Again, in Colorado the gap was 28.1%; in Connecticut, 12.3%; in Michigan, 5.3%; in New Jersey, 4.6%.<sup>46</sup>

#### Voter Registration<sup>47</sup>

	2016			2018			2020		
	White	Black	Gap	White	Black	Gap	White	Black	Gap
National	66.3	65.3	1	63.7	60.2	3.5	69.1	64.7	4.4
<b>Alabama</b>	<b>67.3</b>	<b>72.2</b>	<b>-4.9</b>	<b>68</b>	<b>67.2</b>	<b>0.8</b>	<b>70</b>	<b>60.6</b>	<b>9.4</b>
California	56	55	1	54.6	55.5	-0.9	61.6	64.1	-2.5
Colorado	71.2	67	4.2	62.4	39.6	22.8	68.3	54.5	13.8
Connecticut	68.1	53	15.1	63.8	49.6	14.2	70.2	59.5	10.7
Illinois	70.5	68.6	1.9	64.7	64.5	0.2	70.2	64.5	5.7
Michigan	73.1	68.1	5	73.8	65.2	8.6	72.9	69.8	3.1
New Jersey	64	57	7	64.1	60.3	3.8	78.1	66.2	11.9
New York	63	60.2	2.8	58	54.9	3.1	65.7	62.6	3.1

In the 2020 election, the racial gap in turnout widened nationally to 5%.<sup>48</sup> It's unclear why this was the case, but COVID-19 and the particular candidates up for election likely played a role. Alabama's gap was slightly above average at 7.2% according to the Census data, but still well within national norms: Colorado's was 13.5%, Connecticut's 6.6%, Illinois's 3.5%, Michigan's 4.6%, New Jersey's 11.4%, and New York's 4%.<sup>49</sup> Moreover, according to the Secretary of State's data based on the voter registra-

<sup>44</sup> U.S. Census Bureau, *Voting and Registration in the Election of November 2018*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Data are drawn from the U.S. Census Bureau's Table 4b showing "Reported Voting and Registration by Sex, Race and Hispanic Origin, for States," for each election year. See generally <https://www.census.gov/topics/public-sector/voting/data/tables.html>. The numbers here reflect the "percent registered (Total)" of total population for the "black alone" and "white alone" figure for each State.

<sup>48</sup> U.S. Census Bureau, *Voting and Registration in the Election of November 2020*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2020, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

<sup>49</sup> *Id.*



tion rolls, the black turnout rate in Alabama was actually closer to 57.9% rather than 54.8% as the Census data reported.<sup>50</sup>

Tellingly, the SPLC does not mention the turnout rates or racial disparities in States that were never covered by Section 5. Nor does it produce glossy reports suggesting preclearance for New Jersey or Connecticut or Colorado or New York (or any number of other States that compare unfavorably to Alabama). That’s understandable: Jim Crow 2.0 has not come for those States. But neither has he returned to Alabama. Voting is easy for both black and white voters in Alabama—just as it is elsewhere in the country. The numbers do not lie. The gains of the Voting Rights Act have not been squandered.

### III. Alabama’s Voter ID Laws Are Easy to Comply With and Prevent Fraud

The leading accusation the SPLC levels against current voting conditions in Alabama centers on the State’s photo ID law, which the State enacted before *Shelby County* and implemented, as scheduled, in 2014, after the decision came out. In the SPLC’s telling, the law discriminates on the basis of race because a photo ID is expensive and difficult to obtain. These contentions are demonstrably false. False, too, are the report’s claims that voter fraud is a myth and that photo ID laws do not prevent fraud.

#### A. Alabama Makes Photo IDs Readily Available for Free

At the end of 2015, well-funded advocacy groups challenged Alabama’s law requiring voters to present a photo ID when casting a vote in person or by absentee ballot.<sup>51</sup> The litigation took over two years in federal district court. During that time, the challengers had unprecedented access to Alabama voter rolls and driver’s license data. Yet in all that time, **they could not find a single voter in Alabama who lacked an ID and could not get one.** Alabama proved, and multiple federal judges found, that any voter in Alabama who needs an ID for voting can get one, free of charge, even if she has no access to transportation. In fact, multiple judges found that the plaintiffs failed to produce *any evidence* that would allow a reasonable trier of fact to conclude the law was discriminatory.

The SPLC’s claim that “[o]btaining a photo ID is burdensome for older, lower-income, and rural voters”<sup>52</sup> has thus been thoroughly debunked in federal court. As has its claim that voters must endure the expense and burden of obtaining underlying

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<sup>50</sup> See Secretary of State, *2020 General Election Participation By Race*, <https://www.sos.alabama.gov/sites/default/files/election-data/2021-06/2020%20General%20Election%20Participation%20by%20Race.pdf>. By the Secretary’s data, white voter turnout was 64.7%, so the gap was 6.8%.

<sup>51</sup> See *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253 (N.D. Ala. 2018) (“GBM I”), *aff’d*, *Greater Birmingham Ministries v. Sec’y of State for Ala.*, 992 F.3d 1299 (11th Cir. 2021) (“GBM II”).

<sup>52</sup> SPLC Report at 26.

documents, such as a birth certificate. Here are the facts about Alabama’s photo ID law:

First, Alabama accepts seven different categories of identification, including driver’s licenses, passports, military IDs, student IDs, government employee IDs, tribal IDs, and the free Alabama photo voter ID.<sup>53</sup> As discussed below, the free photo voter identification card is available at each Board of Registrars’ Office in every Alabama County. It is also available through the Secretary of State’s Mobile Unit, which will visit a voter’s home if needed. At least two of the IDs that Alabama accepts—student IDs and government employee IDs—are disproportionately held by minority voters, so the State has specifically chosen to accept forms of identification that black and Latino voters are more likely to possess than white voters.<sup>54</sup>

Second, by the time Alabama’s photo ID law went into effect for the 2014 elections, nearly every voter already had a form of identification that could be used for voting. In the photo ID litigation, plaintiffs’ own expert was able to match 98% of registered black voters, and 99% of registered white voters, with an existing ID that they could use for voting.<sup>55</sup> That minuscule gap had many plausible explanations, and the number of actual voters who already had an ID may have been even higher because the plaintiffs’ expert made no effort to match voters with student IDs, military IDs, tribal IDs, or government employee IDs—which, again, are more likely to be carried by minority voters. The expert also did not account for persons who may have moved but were still on the voter rolls.

Third, for those few Alabamians who do not have a photo ID and wish to receive one, identification cards are free and easy to get. While the SPLC says that voters seeking an ID must pay for a copy of their birth certificate, the truth is that Alabama has gone above and beyond the requirements of the law and ensured that there is no fee for obtaining a copy of a birth certificate when needed to get a photo ID for voting. **As the Eleventh Circuit found: “[A] voter who lacks an appropriate form of ID may acquire the documents needed to obtain a voter ID for no fee.”**<sup>56</sup> Nor does Alabama require a birth certificate to obtain a photo ID in any event. The State has issued free IDs upon presentation of “arrest records, bank documents, Birmingham Housing Authority ID cards, expired county employee IDs, court paternity documents, fishing licenses, EBT cards, pay stubs, Sam’s Club cards, and a ticket issued by a municipality.”<sup>57</sup> Moreover, a voter (including one who is already registered to vote) can prove her identity for purposes of receiving a free photo ID by executing a voter registration

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<sup>53</sup> Ala. Code § 17-9-30(a).

<sup>54</sup> See *GBM II*, 992 F.3d at 1324; *GBM I*, 284 F. Supp. 3d at 1268. All factual findings by the district court and Eleventh Circuit are based on undisputed evidence presented by the State.

<sup>55</sup> *GBM II*, 992 F.3d at 1329.

<sup>56</sup> *Id.* at 1310.

<sup>57</sup> *GBM I*, 284 F. Supp. 3d at 1262.

form or registration update form.<sup>58</sup> This means that a voter can attest to her identity before an election official with no documentation whatsoever and receive a free photo ID for voting.

The SPLC also claims that free IDs are “difficult to obtain” because “a voter must visit their county registrar’s office in person.”<sup>59</sup> But that isn’t true either. The Secretary of State regularly sends its “Mobile Unit” throughout the State to offer free photo IDs at locations convenient to voters; the Unit has made hundreds of treks since the program began.<sup>60</sup> **Moreover, if a resident lacks transportation to travel to a Board of Registrars’ Office or a Mobile Unit event to obtain an ID there, the Mobile Unit will literally drive to that person’s home if requested to provide the free ID.**<sup>61</sup> Any voter who needs one can therefore get a free photo ID for voting, even if she has no documentation, and even if she cannot travel outside her home.

Fourth, the SPLC criticizes Alabama for allegedly moving forward with the photo ID law the day after the Supreme Court decided *Shelby County*. But there was nothing untoward about the State’s timing. The law passed the Legislature in 2011, but by its terms was not scheduled to take effect until 2014. The delayed implementation was designed to give the State time to develop its new free photo ID program and give voters time to obtain their IDs. When the Supreme Court decided *Shelby County* and the State no longer needed to secure preclearance, that meant the State could move forward with a law that had been enacted years before.<sup>62</sup>

With these facts now on the table, it is little wonder that the plaintiffs in the photo ID litigation could not point to a single Alabamian who could not get a photo ID for voting. In fact, the plaintiffs’ own circumstances proved how easy it is to get a photo ID. For example:

- Plaintiff Giovanna Ambrosio could participate in after-school activities, go to work every day in the summer, and make a 25-30 minute trip to go to college classes, but said she could not get to a registrars’ office that was a mile from her house. Before the 2016 general election, she managed to make the one-mile trip and got her ID. She also knew about the mobile unit and the offer to visit any day of the week.
- Plaintiff Debra Silvers (now deceased) had an ALEA nondriver ID but lost it in a fire. When she needed an ID for purposes other than voting, she got a replacement ID.

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<sup>58</sup> *GBM II*, 992 F.3d at 1310.

<sup>59</sup> SPLC Report at 27.

<sup>60</sup> *GBM II*, 992 F.3d at 1311–12.

<sup>61</sup> *Id.* at 1312.

<sup>62</sup> *Id.* at 1307.

- Plaintiff Shameka Harris had an ALEA nondriver ID that was stolen. When she was told she needed an ID for certain government benefits, she got it replaced.
- Plaintiff Elizabeth Ware had an ALEA non-driver ID and lost it. **When she requested it, the Secretary of State’s Mobile Unit traveled over 150 miles one way to her home and issued a photo ID.**<sup>63</sup>

The State also presented undisputed evidence from black election officials in the black belt<sup>64</sup> who were convinced that the law did not make it difficult for black voters to participate in elections. Rashawn F. Harris, who is black and serves as the Circuit Clerk of Bullock County, testified that most complaints she heard about the law concerned “inconvenience,” and that “Alabama’s photo ID requirement was not a problem in the [most recent] election.”<sup>65</sup> She explained that she supported the photo ID law because it helps to prevent voter fraud in her county:

Alabama’s photo ID law is positive for Bullock County in that it helps deter voter fraud. I have seen things in my election work that raised red flags, and I sought guidance from the District Attorney and Secretary of State’s office. An example that comes to mind is a voter who said that he had received an absentee ballot in the mail but that he had not requested the ballot; he had wanted to vote in person at the polls. Additionally, the law is helpful in that I pretty much know everyone who votes absentee and so I recognize the photo ID as belonging to the known voter, and I can sometimes compare the signature on a photo ID to the signature on the absentee ballot application and/or the absentee ballot affidavit—both of which the voter is required to sign.<sup>66</sup>

Other black leaders and election officials testified similarly:

- John Hulett, Probate Judge of majority-black Lowndes County testified that **“Alabama’s photo ID requirement is not deterring Lowndes County citizens from voting.”** He also noted that most poll workers in his county are black, that photo IDs are freely available, and that the Mobile Unit had recently been to his county to provide free IDs.<sup>67</sup>

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<sup>63</sup> *GBM I*, 284 F. Supp. 3d at 1277; *see also GBM II*, 992 F.3d at 1313–15.

<sup>64</sup> The “Black belt,” named for the soil, is a “a string of counties where more than 130,000 eligible voters reside, nearly half of whom are Black, and where the Black poverty rate is 41%.” *GBM I*, 284 F. Supp. 3d at 1265.

<sup>65</sup> *See* Doc. 231-21, *GBM I*, No. 2:15-cv-02193-LSC.

<sup>66</sup> *Id.*

<sup>67</sup> *See* Doc. 231-23, *GBM I*.

- Earlean Isaac, former Probate Judge of majority-black Greene County, testified: “I do not think there is anything wrong with requiring a photo ID to vote. One needs a photo ID for many activities in life, and **it is wrong to believe that Blacks do not have photo IDs or could not get photo IDs if they need one.**” Isaac also stated: “**Alabama’s photo ID requirement helps combat voter fraud. There have been many problems with voter fraud over the years in Greene County,** and I welcomed the joint federal-State investigation which led to convictions. The arrests themselves also helped cut down on the problems.”<sup>68</sup>
- James E. Tatum, Probate Judge for majority-black Bullock County, testified that he was initially concerned that the Photo ID law would be a problem for voters, but “[a]s it turns out, it has not.”<sup>69</sup>

Based on this evidence (and so much more), which went undisputed by the plaintiffs, the federal courts found that no reasonable fact-finder could conclude that Alabama intended to discriminate against minority voters. As the Eleventh Circuit Court of Appeals concluded: **“The fact remains that Plaintiffs cannot point to evidence—not a single comment made by any sitting Alabama legislator in reference to HB19—to support their argument that the voter ID law was intended to discriminate against black and Latino voters.”**<sup>70</sup>

## **B. Real, Actual Voter Fraud in Alabama Necessitated the Voter ID Law**

The Eleventh Circuit also found in the photo ID litigation that Alabama’s reasons for enacting the photo ID law—to prevent voter fraud—were not pretextual.<sup>71</sup> **Rather, “the law’s passage was driven by the need to address well-documented and public cases of voter fraud that occurred in Alabama,” including “in-person impersonation voter fraud.”**<sup>72</sup> Yet the SPLC preposterously asserts that photo ID laws do not deter voter fraud and are a “solution in search of a non-existent problem.”<sup>73</sup> The report takes as an article of faith that voter fraud is a myth and that there is no need for election integrity laws like Alabama’s photo ID law. If only it were so.

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<sup>68</sup> Doc. 231-24, *GBM I*.

<sup>69</sup> Doc. 232-14, *GBM I*.

<sup>70</sup> *GBM II*, 992 F.3d at 1325.

<sup>71</sup> *Id.* at 1334.

<sup>72</sup> *Id.* at 1323–24, 1334.

<sup>73</sup> SPLC Report at 29.

Alabama proved otherwise. The State presented undisputed evidence that voter fraud was a real problem in Alabama that led legislators and citizen advocates to support strengthening the integrity of Alabama elections.

The Eleventh Circuit explained:

[I]n the mid-1990s, Alabama grappled with some recent, high-profile, and well-documented cases of absentee voter fraud that captured the public attention of Alabamians. These instances of voter fraud were summarized by a July 1996 article in *The Birmingham News*.

Various citizen groups formed to spread the word about the need for a photo ID law to combat voter fraud. **Alabama and the federal government worked together to investigate and prosecute cases of voter fraud in absentee voting. The investigation uncovered that, for example, voters would sign absentee ballot-related paperwork without ever marking the ballot, and, in a handful of instances, the voters were not involved in the process at all and their signatures were forged.** Sometimes voters would be convinced, threatened, or bribed to give up their ballot materials and sometimes voters would sign the absentee ballot affidavits without marking the ballots. One investigation also revealed there were people at the polls on election day with a list of voters whose ballots had been fraudulently cast and they would chase away these voters when they came to the polls to cast their ballots.<sup>74</sup>

The Court's findings were well supported by the evidence. Alabama presented undisputed evidence from investigators and prosecutors who proved that voter fraud has indeed been a problem in Alabama, particularly with absentee ballots. **Gregory M. Biggs successfully prosecuted election fraud cases in Wilcox, Greene, Hale, and Winston Counties. Except for the Winston County cases, the victims in all these cases who had their votes stolen were black.**<sup>75</sup> The evidence in Greene County showed that "multiple defendants created an assembly line process to complete the stolen absentee applications, affidavits, and ballots."<sup>76</sup>

Investigator Larry Linder provided testimony about his work on a joint State-federal task force addressing fraud in the 1990s. His three-year investigation in Greene County showed that voters were being manipulated and that some voters said their absentee ballot paperwork had been forged.<sup>77</sup> The problems in Greene County were well documented in the media, including evidence of ballot brokers who would get

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<sup>74</sup> *GBM II*, 992 F.3d at 1305.

<sup>75</sup> Doc. 231-10, *GBM I*.

<sup>76</sup> *Id.*

<sup>77</sup> Doc. 231-27, *GBM I*.



voters to request absentee ballots, but the brokers would arrange for the ballot to be sent to a candidate, campaign worker, or a post office box under their control.<sup>78</sup> Former Alabama Supreme Court Justice Glenn Murdock, who at the time was in private practice, worked on an election challenge in 1994 and learned of 5 suitcases of absentee ballots being delivered to a post office in Greene County.<sup>79</sup>

Kenneth L. Murphy testified about his investigation in Wilcox County. A handwriting expert determined that in a 1994 election, **597 absentee ballots were cast by only 6 people**.<sup>80</sup> Murphy determined that “there were people at the polls on Election Day with a list of voters whose ballots had been fraudulently cast, and that those people were running off the voters when they appeared at the polls to cast their ballots in person.”<sup>81</sup> Votes were simply being stolen.

Richard Roper, the handwriting expert who worked with Murphy in Wilcox County, worked in other voter fraud investigations as well. In a Greene County prosecution, **Roper examined thousands of absentee ballots delivered to the post office in suitcases** the day before the election and concluded that the voters’ signatures were not consistent across voter registration forms, absentee ballot applications, and absentee ballot affidavits.<sup>82</sup> He concluded the ballots were forged.

Investigator George Barrows worked fraud cases in Hale County over the course of ten elections. **One investigation resulted in overturning the 2004 mayoral election in the town of Greensboro and led to a conviction**.<sup>83</sup> Barrows interviewed voter after voter in Hale County who had an absentee ballot cast in his name, but the voter would say: “[N]o, I never voted this; that’s not my signature.”<sup>84</sup>

Voter fraud can change the result of elections. In 2016, Elbert Melton was elected Mayor of Gordon, Alabama, by a margin of 16 votes. In 2019, he was convicted of “unlawfully falsifying ballots” and removed from office.<sup>85</sup> But for two years, the citizens of Gordon were represented not by the mayor of their choice but by a mayor who obtained his office at least in part by tainted ballots that cancelled votes of legitimate voters.

Also in 2016, Brandon Dean was elected Mayor of Brighton, Alabama. In 2017, a court removed him from office and ordered a runoff election, finding among other things that enough absentee votes were invalid to require a runoff election, including

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<sup>78</sup> Doc. 231-29, *GBMI*.

<sup>79</sup> Doc. 232-1, *GBMI*.

<sup>80</sup> Doc. 232-7, *GBMI*.

<sup>81</sup> *Id.*

<sup>82</sup> Doc. 231-12, *GBMI*.

<sup>83</sup> Doc. 227-10, *GBMI*.

<sup>84</sup> *Id.*

<sup>85</sup> See *Alabama Mayor Convicted of Fraud, Removed from Office*, ASSOCIATED PRESS (Jan. 17, 2019), <https://www.al.com/news/2019/01/alabama-mayor-convicted-of-fraud-removed-from-office.html>.

22 ballots that had been sent to Dean's address instead of where the voters regularly received mail.<sup>86</sup> Dean ultimately declined to participate in that court-ordered runoff.<sup>87</sup>

In a 2013 election, Dothan City Commissioner Amos Newsome lost the in-person vote 154 to 109, but there were 140 absentee ballots cast. Remarkably (or not, as it turned out), 131 of the absentee ballots were for Newsome. Several members of Newsome's campaign staff were convicted of voter fraud.<sup>88</sup> Newsome refused calls to resign and served a full, ill-gotten term in office.

And in a County Commission race in Pike County, Republican incumbent Karen Tipton Berry was convicted of voter fraud and forced to vacate her office in favor of the winner, Oren Fannin.<sup>89</sup>

Likewise, in Hale County, J.B. "Johnnie" Washington was originally declared the victor of the 2004 mayoral race in Greensboro, but after a number of absentee ballots for Washington were disqualified as fraudulent or otherwise illegal, his opponent, Vanessa Hill, was named the victor—though by that time, Washington had already served half the stolen term.<sup>90</sup> According to the decision from the Alabama Supreme Court, Washington was originally "certified as having received 762 votes (511 poll votes and 251 absentee votes), and Hill was certified as having received 672 votes (620 poll votes and 52 absentee votes)."<sup>91</sup> A "special master found that at least 148 illegal absentee votes had been cast for Washington and 8 illegal absentee ballots had been cast for Hill. After subtracting the illegal votes from the total votes for each of the two candidates, the special master found that Hill had prevailed in the election by a vote of 664 to 614."<sup>92</sup> Seventeen of the disqualified ballots included forged signatures.<sup>93</sup>

And in Mobile County, a 2006 election for a seat in the Alabama House of Representatives was nearly stolen from Dr. James Gordon, a black candidate, because of voter fraud. He testified that he challenged the results and ultimately prevailed.<sup>94</sup> News articles at the time informed the public of the details.<sup>95</sup> Gordon had led the field

<sup>86</sup> See Ivana Hrynkiw, *Brighton Mayor Brandon Dean Ordered to Vacate Office, Run-off Election Ordered*, AL.COM (Sept. 25, 2017), [https://www.al.com/news/birmingham/2017/09/brighton\\_mayor\\_brandon\\_dean\\_or.html](https://www.al.com/news/birmingham/2017/09/brighton_mayor_brandon_dean_or.html).

<sup>87</sup> See Howard Koplowitz, *Brandon Dean Won't Run in Brighton Mayoral Runoff as City Faces Financial Hardship*, AL.COM (Oct. 6, 2017), [https://www.al.com/news/2017/10/brandon\\_dean\\_wont\\_run\\_in\\_brigh.html](https://www.al.com/news/2017/10/brandon_dean_wont_run_in_brigh.html).

<sup>88</sup> Docs. 229-27 & 231-1, GBM I; see also *Commissioners Call for Amos Newsome to Resign After Voter Fraud Convictions*, DOTHAN EAGLE (Sept. 4, 2015), [https://dothaneagle.com/news/government/commissioners-call-for-amos-newsome-to-resign-after-voter-fraud-convictions/article\\_008fc1d0-531c-11e5-bc02-1f2f99a77d33.html](https://dothaneagle.com/news/government/commissioners-call-for-amos-newsome-to-resign-after-voter-fraud-convictions/article_008fc1d0-531c-11e5-bc02-1f2f99a77d33.html); *Reynolds v. State*, 2016 WL 3456719 (Ala. Crim. App. May 23, 2016) (State Appellate Br.).

<sup>89</sup> Doc. 231-8, GBM I.

<sup>90</sup> Doc. 231-13, GBM I; see *Washington v. Hill*, 960 So. 2d 643 (Ala. 2006).

<sup>91</sup> *Washington v. Hill*, 960 So. 2d at 646.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 650.

<sup>94</sup> Doc. 228-8, GBM I.

<sup>95</sup> Bill Barrow, *Gordon: Absentees Had Mass Forgeries*, MOBILE PRESS-REGISTER (Aug. 15, 2006); Bill Barrow, *Arguments Continue over Absentee Ballots*, MOBILE PRESS-REGISTER; Dan Murtaugh, *Both Sides Raise Questions About Ballots*, MOBILE PRESS-REGISTER (Aug. 22, 2006); Bill Barrow, *Gordon Named House Winner; Ousted Flott Vows to Appeal*, MOBILE PRESS-REGISTER (Aug. 24, 2006).



in the Democratic primary but was forced into a runoff with Darren Flott; both men are black. During the primary, about 4.6% of the votes were absentee, while that percentage swelled to 15.5% for the primary runoff. Gordon received more votes at the polls, but received 140 fewer absentee ballots than Flott. Gordon challenged the results within the Democratic party, which “found 82 instances of absentee ballot fraud, including several votes cast on behalf of mentally incompetent persons,” and concluded that Gordon had won by eight votes.<sup>96</sup> Flott and a nursing home employee were later prosecuted.<sup>97</sup>

The list could go on, and the conclusion is undeniable: **Voter fraud is real. Alabama has proven it. And all too often, the victims are black voters and black candidates whose votes and right to hold office are stolen by unscrupulous candidates and supporters.** Alabama did something about this fraud by passing a photo ID law. That law may not stop all fraud, but it will stop some instances of it, and it will deter others. And the law indisputably makes it so easy to get a free photo ID that no one is prevented from voting.

## IV. The SPLC Misrepresents the Record on Polling Place Closures

The SPLC next charges that “[r]ampant poll closures and changes have caused excessively long lines and voter confusion, and have prevented many voters from casting a ballot.”<sup>98</sup> **Yet the SPLC apparently could not find even one Alabamian who was actually prevented from voting due to a poll closure, for none of the declarations relate such a story.**<sup>99</sup> The SPLC also makes no effort to show that Alabama’s polling-station closures are worse for the State’s black citizens than for its white citizens, thus failing to provide any relevant comparators to support its claim of racial discrimination. At bottom, the SPLC’s conjecture distorts reality and does not come close to showing the “exceptional conditions” required to justify the “potent weapon[]” of pre-clearance.<sup>100</sup>

### A. Voters Can Easily Tell Where Their Polling Place Is

The SPLC declares that “Alabama law does not require counties or local jurisdictions to notify voters” of changes to their polling places.<sup>101</sup> This is plainly incorrect.

<sup>96</sup> Bill Barrow, *Gordon Named House Winner; Ousted Flott Vows to Appeal*, MOBILE PRESS-REGISTER (Aug. 24, 2006).

<sup>97</sup> Gary McElroy, *Former Candidates Face Charges of Voter Fraud*, MOBILE PRESS-REGISTER (July 13, 2007); *State v. Flott*, No. 02-CV-2007-002709 (Mobile Cnty. Cir. Ct.); *State v. Green*, No. 02-CV-2007-002705 (Mobile Cnty. Cir. Ct.).

<sup>98</sup> SPLC Report at 35.

<sup>99</sup> See SPLC Report, Exs. 7, 10, 13, 15, 17, 23, 29, 33, 55, 56.

<sup>100</sup> *Katzenbach*, 383 U.S. at 334, 337.

<sup>101</sup> See SPLC Report at 35–36.

Alabama law expressly requires that probate judges, “within five days” of receiving information about polling stations’ locations,

shall give notice of the same by publication in a newspaper of general circulation published in the county and shall have the same posted by the sheriff at the courthouse and at two public places in the election district of the precinct. The notice shall describe the election precincts by their numbers and shall specify the place therein where elections are to be held.<sup>102</sup>

The SPLC further asserts that because Alabama’s “Secretary of State’s office has no centralized database to document precinct closures across the State to help keep voters informed ... voters must often rely on word-of-mouth, local media reports, or social media to learn what election officials should have told them ahead of time—information as basic as confirming where to vote.”<sup>103</sup> **But the Secretary of State’s Voter-View tool allows all Alabamians to locate their registration status, ballot status, and designated polling stations simply by entering their name and date of birth on a publicly accessible website.**<sup>104</sup> If one simply Googles “find polling place Alabama,” a link to the State’s VoterView product is the top result. In fact, the Secretary of State even published a smartphone app, “Vote for Alabama,” which provides Alabamians this same information in real time. Given the widespread accessibility of Alabama’s polling-place information, the SPLC’s report does not represent actual conditions in Alabama.

The SPLC makes much of the fact that Jefferson County, Mobile County, and the city of Daphne have closed polling places.<sup>105</sup> But counties may opt to close polling stations for any number of legitimate reasons. A county might determine that a polling station is underutilized and that poll workers and voting machines are better deployed in a more centralized polling station. A county could also reasonably conclude that something as mundane as “construction at the fire station” necessitates moving voters out of a polling station.<sup>106</sup> But instead of investigating why these various counties may have closed polling places—or providing any analysis whatsoever regarding the importance of the closed locations—the SPLC simply provides quotes documenting some Alabamians’ frustrations with their voting experiences. And while Alabama hopes that voting will never include a negative experience for anyone, many of these experiences appear to have been avoidable if only the declarants had taken advantage of the State’s free resources and simply determined where they were registered to vote prior to embarking to polls.

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<sup>102</sup> Ala. Code § 17-6-4; *see also* Alabama Law Institute, *Alabama Election Handbook* § 5.1.1 (19th ed.), available at [http://lsa.state.al.us/PDF/ALI/election\\_handbook/Elect\\_Hndbk\\_19th\\_ed/Alabama-Election-Handbook-19th-Edition.pdf](http://lsa.state.al.us/PDF/ALI/election_handbook/Elect_Hndbk_19th_ed/Alabama-Election-Handbook-19th-Edition.pdf).

<sup>103</sup> SPLC Report at 35–36.

<sup>104</sup> *See* Alabama Votes, *Registration Information*, <https://myinfo.alabamavotes.gov/voterview>.

<sup>105</sup> *See* SPLC Report at 39–44.

<sup>106</sup> *See* SPLC Ex. 55 ¶ 8.

## B. The SPLC's Polling-Related Declarations Show Inconveniences, Not Constitutional Violations

The declarations that the SPLC cites serve only to strengthen the case against preclearance. Again, despite the SPLC's claim that poll-station closures "have prevented many voters from casting a ballot,"<sup>107</sup> the SPLC could not find a single voter who was unable to cast a ballot because of a polling-station closure. Perhaps most notably, one of the SPLC's declarants appears to be Sheila Tyson,<sup>108</sup> who is a county commissioner<sup>109</sup> and, under Alabama law, is therefore chiefly responsible for the election-related deficiencies she decries.<sup>110</sup>

Part of what makes these declarations remarkable is that they are the best the SPLC could garner despite its well-funded campaign to canvass Alabama for declarations from anyone with a voting-related grievance. Several are worth highlighting to illustrate:

- Bettie from Madison County explained that her niece drove her to Huntsville to vote, and that "[w]hen [they] arrived, [she] saw hundreds and hundreds of people waiting in line for two to three hours."<sup>111</sup> Nevertheless, "[b]ecause of [her] age," Bettie "was able to move to the front of the line and did not have to wait in that line."<sup>112</sup> In other words, Alabama's voting laws helped Bettie cast her ballot. Bettie then discussed a bad voting experience she had when she tried to vote **in Michigan**.<sup>113</sup>
- Doris from Mobile County stated that "the November 2020 election ... was the first time in Mobile that [she's] had problems with long lines and parking when [she] went to vote."<sup>114</sup> The problems, as she explained them, were that she and her brother had to park far from the polling station,<sup>115</sup> and that they waited in a long line for "about 20 minutes" until a poll-worker told them that, as seniors, they could "go up front" to

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<sup>107</sup> SPLC Report at 35.

<sup>108</sup> See SPLC Ex. 47.

<sup>109</sup> See Jefferson County Alabama, *Sheila Tyson Biography*, <https://perma.cc/4XAG-TH5Z>.

<sup>110</sup> See Association of County Commissions of Alabama, *Handbook for Alabama County Commissioners* Ch.V.A (11th ed.), <http://www.alabamacounties.org/wp-content/uploads/2011/10/2012CountyCommissionerHandbook.pdf> ("The county commission is the chief legislative body of the county, with a wide range of responsibilities including elections. . . . For elections, the county commission makes basic decisions about precincts, voting equipment, and voting place administration.")

<sup>111</sup> SPLC Ex. 7 ¶ 4.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* ¶ 5.

<sup>114</sup> SPLC Ex. 15 ¶ 5.

<sup>115</sup> *Id.* ¶ 6-7.

vote.<sup>116</sup> As with Bettie from Madison County, Doris’s declaration shows that Alabama’s voting laws helped her and her brother cast their ballots.

- John from Jefferson County averred that he “ha[s] been voting in Alabama since [he] was 18 years old, and [he] [is] 59 now,”<sup>117</sup> and that he “vote[s] first thing in the morning,” which usually takes “about 15 minutes.”<sup>118</sup> John’s only reported complaints from his decades of voting are (1) that he has found the straight party voting ballot to require him to “read the ballot very carefully ... to avoid making a mistake,” and (2) that one time “someone new who was working at [his] polling place” mistakenly told John that he “was at the wrong polling place because they could not find my name in the voting rolls,” but that “after a bit of searching[] they found [his] name and allowed [him] to vote.”<sup>119</sup>
- Karen from Colbert County explained that her “nearby old polling place” closed in 2016, and she “was notified that [her] new polling place would be located across the highway.”<sup>120</sup> Born in 1953, Karen stated she is “getting older and can still drive, but [she] [is] not comfortable and do[es] not feel safe trying to drive across that highway, but [she] ha[s] had to drive across it anyway in order to get to this new polling place.”<sup>121</sup>
- Willie from Crenshaw County explained that, despite voting at a specific location “for 15 to 20 years,” he has only had one “bad voting experience,” which occurred “two to three years ago,” when he was unaware that his designated polling station had changed so he had to drive to a new location to vote.<sup>122</sup> Nevertheless, Willie was able to vote and “ha[s] been able to vote at this location with no difficulty since that time.”<sup>123</sup>

The SPLC determined these declarations were among the *best evidence* it could marshal to support imposing preclearance on Alabama. But, as demonstrated above, many of these declarations actually suggest Alabama’s elections process operates well. Though some declarants were understandably annoyed by their experiences, few dec-

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<sup>116</sup> *Id.* ¶ 9.

<sup>117</sup> SPLC Ex. 24 ¶ 3.

<sup>118</sup> *Id.* ¶ 5.

<sup>119</sup> *Id.* ¶¶ 7-8.

<sup>120</sup> SPLC Ex. 29 ¶ 7.

<sup>121</sup> *Id.* ¶ 8.

<sup>122</sup> SPLC Ex. 56 ¶¶ 4-5.

<sup>123</sup> *Id.* ¶ 5.

larations, if any, illustrate problems attributable to the State. To the contrary, most of the complaints appear as though they could have been avoided had the declarants checked any of the State’s free resources to determine their designated polling places prior to voting. Nothing about Alabama counties’ management of their polling stations comes close to justifying federalization of the State’s election process.

## V. In Alabama, In-Person Voting Is the Norm, but Absentee Voting Is Available

In-person voting is the norm in Alabama, as it always has been. Polling places are open from 7:00 a.m. to 7:00 p.m. on Election Day,<sup>124</sup> but voters who are unable to vote in person for any number of recognized reasons may vote absentee.<sup>125</sup> Alabama thus seeks to make voting both easy and secure, and to balance the desire to have Election Day serve as an important civic event while accommodating voters who otherwise would not be able to participate. These basic structures of voting in Alabama are not new, but pre-date the Supreme Court’s decision in *Shelby County* and were pre-cleared by the Department of Justice before then.

Despite Alabama’s resounding success in recent years of registering voters and increasing turnout, the SPLC claims that preclearance is needed once more because Alabama has not kept up with national trends. “Alabama’s reluctance to expand early voting,” it argues, “cuts against the clear preference of voters *nationally*,” while “[t]he State’s requirement that voters have a qualifying reason to vote absentee stands in contrast with 34 other states.”<sup>126</sup> But the “preference of voters *nationally*” should not dictate the preference of voters *in Alabama*, and the SPLC has not shown why *Alabama* voters are ill-served by the laws *their* representatives enacted.

### A. Alabama Accommodates Voters with Disabilities

Alabama does not provide early in-person voting or curbside voting. The SPLC attacks these choices as bad “for older voters and voters with disabilities,”<sup>127</sup> but the State offers other accommodations to address these concerns. For instance, by law voters over 70 and voters who are mobility disabled may go to the front of the line to vote, and by law each polling place is required to post a public notice explaining this

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<sup>124</sup> Ala. Code § 17-9-6; Ala. Act No. 2003-337, p. 844, § 1.

<sup>125</sup> A voter qualifies to vote absentee if he or she (1) expects to be out of the county or state on Election Day, (2) as a physical illness, permanent disability, or infirmity which prevents his or her attendance at the polls, (3) expects to work a shift which has at least 10 hours that coincide with the hours the polls are open, (4) is enrolled as a student at an educational institution located outside the county of his or her physical residence, (5) is a member of, or spouse or dependent of a member of, the military, (6) is serving as a poll watcher or election official at a polling place other than his or her regular polling place, (7) is a caregiver for a family member who is confined to his or her home, or (8) is incarcerated and has not been convicted of a felony involving moral turpitude. Ala. Code §§ 17-11-3(a), 17-11-3.1(a).

<sup>126</sup> SPLC Report at 49 (emphasis added).

<sup>127</sup> SPLC Report at 58.

accommodation.<sup>128</sup> Likewise, any person with a “physical illness or infirmity which prevents his or her attendance at the polls” may vote absentee—either by mail or in person ahead of Election Day.<sup>129</sup> Voters with a permanent disability may also be “placed on an absentee voter list and have a ballot automatically mailed to [them] before each election.”<sup>130</sup>

**While it is unfortunate that the SPLC’s declarants evidently did not know of these accommodations, Alabama law as it already exists would make voting much easier for them and alleviate many of the concerns they have.** Carolyn, for instance, relates that she has lung disease and bad arthritis in her back, and that she waited in line at her polling station for 15-20 minutes but left because she “was in so much pain from standing there.”<sup>131</sup> Under Alabama law, though, she could have gone to the front of the line and voted as soon as she got to her polling place—and there should have been a sign posted at her polling place saying just that. Alternatively, given her disability, she could have skipped going to the polling place entirely and voted absentee—which in her declaration she says “would be best,” but she wasn’t sure how to get the form. That, too, is unfortunate; the absentee ballot instructions are listed on the Secretary of State’s website (among other places), and if Carolyn had called the Secretary’s Office or her local election officials, she would have been told exactly what to do.

The stories are similar for many of the other declarants. Betty, Thomas, and Shannon all say they waited in line for over an hour to vote despite their disabilities,<sup>132</sup> but they, too, could have gone to the front of the line if their disabilities made walking or standing in line difficult. And Dr. Peebles, who has cerebral palsy and argues that he should have been allowed to use curbside voting in the 2020 Election “as it would have allowed him to avoid dangerous person-to-person contact” during COVID-19,<sup>133</sup> was eligible to vote absentee, which would have ensured he did not come into contact with anyone at his polling place.

Other declarants told of abhorrent behavior unrelated to Alabama’s voting laws. Jamie, for instance, said she received racist threats by men who drove by her in a truck when she went to vote in 2008 (when preclearance was still in effect).<sup>134</sup> And Kelvin discussed a racist comment he heard when walking from the parking lot to the polling place.<sup>135</sup> Unquestionably, these comments never should have happened. But there is no allegation they were made by, or associated with, any state or local official, that officials failed to respond adequately, or that they were even told of the events.

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<sup>128</sup> Ala. Code § 17-9-13(c), (e).

<sup>129</sup> Ala. Code § 17-11-3(a)(2).

<sup>130</sup> Ala. Code § 17-11-3.1(b).

<sup>131</sup> SPLC Ex. 11 at 1.

<sup>132</sup> SPLC Report at 47, 58.

<sup>133</sup> SPLC Report at 59.

<sup>134</sup> SPLC Report at 47–48; Ex. 21.

<sup>135</sup> SPLC Ex. 31 at 1.



The SPLC likewise fails to acknowledge the problems that would arise if Alabama implemented curbside voting in the way it suggests—“by allowing voters to submit their ballot to an election worker outside of the polling place.”<sup>136</sup> **One major problem is obvious: it would take the ballot out of the voter’s sight before it is recorded.** And Alabama has an interest in promoting transparency so that voters can rest assured that their ballot, as they marked it, is counted. That is why Alabama generally requires each voter to personally sign the poll list and place his or her ballot in the tabulation machine.<sup>137</sup> As Secretary of State John Merrill explained, “[b]y keeping the ballot in the hands of the voter, we ensure each vote is counted accurately, honestly, and independently from any poll worker or third party.”<sup>138</sup>

## B. Absentee Voting in Alabama Is Easy and Secure

Alabama offers absentee voting to anyone who: (1) expects to be out of the county or state on Election Day, (2) has a physical illness, permanent disability, or infirmity which prevents his or her attendance at the polls, (3) expects to work a shift which has at least 10 hours that coincide with the hours the polls are open, (4) is enrolled as a student at an educational institution located outside the county of his or her physical residence, (5) is a member of, or a spouse or dependent of a member of, the military, (6) is serving as a poll watcher or election official at a polling place other than his or her regular polling place, (7) is a caregiver for a family member confined to his or her home, or (8) is incarcerated and has not been convicted of a felony involving moral turpitude.<sup>139</sup>

**Absentee voting begins 55 days before Election Day, so voters have nearly two months to get their paperwork in.** The paperwork consists of two parts. First, the voter fills out an absentee ballot application, which is available for free on the Secretary of State’s website and includes the contact information for each county’s absentee election manager.<sup>140</sup> The voter submits the application to the absentee election manager—by mail or in person—along with a copy of the voter’s photo ID.<sup>141</sup> Voters “unable to access [their] assigned polling place” and who are either disabled or over 65 may apply for an absentee ballot without providing a copy of their photo ID.<sup>142</sup>

Second, the voter is mailed or given an absentee ballot and envelope. On the envelope is an affidavit that the voter fills in with the reason why she voted absentee; below that is a signature line for the voter to sign.<sup>143</sup> The affidavit must then be signed

<sup>136</sup> SPLC Report at 58.

<sup>137</sup> *E.g.*, Ala. Code § 17-9-11.

<sup>138</sup> SPLC Report at 58 (alteration in original).

<sup>139</sup> Ala. Code §§ 17-11-3(a), 17-11-3.1(a).

<sup>140</sup> <https://www.sos.alabama.gov/alabama-votes/absentee-ballot-applications>.

<sup>141</sup> *See* Ala. Code §§ 17-11-4, 17-9-30(b).

<sup>142</sup> Ala. Code § 17-9-30(d); Ala. Admin. Code r. 820-2-9-.12(3).

<sup>143</sup> Ala. Code § 17-11-7.

either by two witnesses or one notary public.<sup>144</sup> The voted ballot is sealed inside the affidavit envelope and returned to the absentee election manager. The ballot must be received by the absentee election manager by noon on Election Day.<sup>145</sup>

Normally, the absentee ballot application must be returned within seven days of Election Day if mailed or five days of Election Day if returned by hand.<sup>146</sup> But if an emergency arises within five days of the election, the voter can still receive and vote an emergency absentee ballot.<sup>147</sup> For example, if a voter requires emergency medical treatment, the voter can have her doctor sign a note and submit the application and note to the absentee election manager and receive an emergency ballot that way.<sup>148</sup> (The voter can have someone else to take the application to the manager.<sup>149</sup>) Or if the voter learns that she is required to work on Election Day and will be unavailable to vote for that reason—or that she has to take care of someone who requires emergency medical treatment, or that a family member has died—the voter may appear at the office of the absentee election manager and vote an emergency absentee ballot then and there.<sup>150</sup>

During the 2020 election season, Secretary Merrill—who SPLC baselessly libels as a “champion[]” of “voter suppression”<sup>151</sup>—issued an emergency rule allowing any person who did not want to vote in person because of fear of contracting COVID-19 to vote absentee.<sup>152</sup> And while the SPLC acknowledges that this flexibility provided additional options to voters in response to the pandemic, **notably, such flexibility was not guaranteed before *Shelby County*, when every minor change had to be precleared by the Department of Justice or a federal court.**

For example, in August 2012, the Governor of Alabama ordered an evacuation of the coastline in anticipation of Hurricane Isaac. It just so happened that local elections had been scheduled for that time. As the storm approached the shores, the Department of Justice sent a letter reminding Alabama that any “postponement of elections” due to the hurricane would be subject to its “review under Section 5.”<sup>153</sup> To the DOJ’s credit, it considered and approved the resulting preclearance requests on an expedited track. But at a time when state and local officials should have been focused on more pressing matters, they were seeking approval of their disaster response from the

<sup>144</sup> Ala. Code § 17-11-7.

<sup>145</sup> Ala. Code § 17-11-18.

<sup>146</sup> Ala. Code § 17-11-3(b).

<sup>147</sup> Ala. Code § 17-11-3(d), (e).

<sup>148</sup> Ala. Code §§ 17-11-3(d), 17-11-4.

<sup>149</sup> Ala. Code §§ 17-11-3(d), 17-11-4.

<sup>150</sup> Ala. Code § 17-11-3(e).

<sup>151</sup> SPLC Report at 82.

<sup>152</sup> See *People First of Alabama v. Merrill*, 467 F. Supp. 3d 1179, 1195 (N.D. Ala. 2020); see also Ala. Code § 17-11-3(f); Ala. Admin. Code r. 820-2-3-.06-.04ER.

<sup>153</sup> Letter from T. Christian Herren, Chief, Voting Rights Section, to Beth Chapman, Secretary of State, and Luther Strange, Attorney General, at 1 (Aug. 27, 2012).



DOJ Voting Rights Section. Fortunately, the same red tape did not exist when Alabama was forced to adjust (and readjust) in response to COVID-19.

The SPLC nevertheless attacks Alabama’s absentee voting laws as “onerous.” Yet again, many of the examples it provides simply show an unfortunate lack of familiarity with Alabama’s existing voting laws. Margaret, for instance, laments having to take a Megabus from Atlanta to Mobile to vote in person because she did not receive an absentee ballot—which she did not receive, she says, because she did not include a copy of her photo ID with her absentee ballot application.<sup>154</sup> Margaret explained that she “do[es] not remember seeing anything on the absentee ballot application about a photo ID requirement,”<sup>155</sup> but the absentee ballot application form specifically provides in red text at the top of the page: “Please note that a copy of your valid photo identification must be submitted along with this application.”<sup>156</sup>

If you changed residence since you last voted, you must update your voter registration information at [Alabamavotes.gov](http://Alabamavotes.gov) or with your local Board of Registrars before submitting this application.

**APPLICATION FOR ABSENTEE BALLOT**

\_\_\_\_\_  
COUNTY, ALABAMA

FORM AV-R1  
Date Revised 07/15/2021

Return this application to:  
Mobile County AEM  
PO Box 7  
Mobile, Alabama 36601-0007

**Please note that only one application may be placed in the same envelope.**  
**Please note that a copy of your valid photo identification must be submitted along with this application.**

**General Voter Information - Please provide complete information so that we may verify your eligibility to vote.**

Last Name (Please print)		First Name		Middle or Maiden Name	
Street Address (address where you are registered to vote; do not use PO box)				City	State ZIP
Mail my ballot to the address where I regularly receive mail, if different from the street address provided above					
E-mail Address					
Date of Birth	Month	Day	Year	Driver's License Number	IF NO DRIVER'S LICENSE NUMBER
Home/Cell Telephone Number ( )	Work Telephone Number ( )				Last 4 digits of Social Security number

Other declarants, like Lashanda, complained about waiting in line for an hour to return her absentee ballot.<sup>157</sup> But, as Lashanda acknowledged, she had to wait in line because she “waited too late” to mail her absentee ballot. Other people she knew just “didn’t want to mail their ballots.”<sup>158</sup> Of course, whether to mail an absentee ballot is a decision left to each voter, but an individual’s choice not to do so is no reason to characterize Alabama law as “onerous.”

The SPLC also complains about the State’s witness requirement. But finding two witnesses or one notary public to sign an affidavit is simply not difficult. Witnesses are required in normal life for all sorts of things. During the *People First* litigation (discussed more below), some of the individual plaintiffs complained that they were unable to get their affidavits witnessed safely because of COVID-19. **But even the plaintiffs’ expert medical witness admitted that there were safe ways to have two witnesses sign a piece of paper during the COVID-19 pandemic.**

<sup>154</sup> SPLC Report at 53-54 & Ex. 37 at 2.

<sup>155</sup> SPLC Ex. 37 at 1.

<sup>156</sup> <https://www.sos.alabama.gov/sites/default/files/absentee-forms/Mobile%20Absentee%20App.pdf>.

<sup>157</sup> SPLC Report at 52.

<sup>158</sup> SPLC Ex. 34 at 1.

And it turned out that the individual plaintiffs were already seeing people in their daily lives who could sign their affidavits—in-home nurses and caregivers, family members, clerks at the local grocery store. **And that was during COVID-19.** There is no reason to think that complying with the witness requirement in normal times is at all “onerous.”

### **C. Alabama Defended Itself from a Challenge to Change Its Election Laws *During an Election***

The SPLC also chides Alabama for daring to defend itself in a lawsuit that sought to change Alabama’s voting laws and procedures **during an election**.<sup>159</sup> In May 2020, the SPLC and other organizations filed suit in *People First of Alabama v. Alabama Secretary of State John Merrill*. They and a handful of individual plaintiffs challenged three aspects of Alabama’s voting laws: the witness requirement for absentee voting, the photo ID requirement for absentee voting, and the lack of curbside voting. The district court initially granted a preliminary injunction in plaintiffs’ favor **just 29 days before Alabama’s primary election runoff**.<sup>160</sup> Given the chaos of drastically modifying election law during an election (absentee voting began 55 days before Election Day), the State appealed the ruling and obtained a stay from the U.S. Supreme Court.<sup>161</sup>

The case then went to trial on plaintiffs’ motion for a permanent injunction. It is worth pausing a moment on some of the individual plaintiffs’ claims and what the evidence revealed, because these were the best the SPLC and other organizations could find:

- Plaintiff Howard Porter, Jr. claimed that he could not comply with the photo ID law for his absentee ballot application because he was “worried that [he] may not be able to afford the ink, paper, and toner needed to maintain [his] printer” if the printer, which had ink in it, ran out of ink.<sup>162</sup> This bears repeating: **Plaintiffs’ theory was that an otherwise valid election law was rendered unconstitutional because one voter began to worry about a possible ink shortage.**
- Plaintiff Annie Carolyn Thompson challenged the witness requirement for absentee voting because, she alleged, she could not safely find two people to witness her voter affidavit because of COVID-19. But at trial she testified that—in the district court’s summation—she regularly “le[ft] home to visit her bank, pharmacy, doctor’s office, and grocery store,”<sup>163</sup> as well as to

<sup>159</sup> SPLC Report at 60.

<sup>160</sup> *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179 (N.D. Ala. 2020).

<sup>161</sup> See *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020).

<sup>162</sup> *People First*, Doc. 16-45 at 14.

<sup>163</sup> *People First of Ala. v. Merrill*, 491 F. Supp. 3d 1076, 1146 (N.D. Ala. 2020).

take her Shih Tzu for regular shampooing. (The dog, the court explained, “ha[d] a skin condition that require[d] recurrent trips to both the groomer and veterinarian.”<sup>164</sup>) Obviously, Thompson could have gotten her ballot witnessed on one of her many outings.

- Plaintiff Eric Peebles likewise challenged the witness requirement and likewise claimed that he could not safely find witnesses for his ballot affidavit due to COVID-19. But he, like the other witnesses, admitted that he regularly saw people during the pandemic—including his daily in-home nurses (he has cerebral palsy), the lawyers he visited (six of them at once), and his bankers, among others.<sup>165</sup> So he, too, could have gotten his affidavit witnessed.

The State also presented evidence why changing its election laws right before or during an election was a bad idea, and the Director of Elections in the Secretary of State’s Office identified a host of practical issues that would need to be resolved before a county could implement curbside voting. He explained:

[To have curbside voting], [y]ou’d have to have additional workers. You’d have to have additional electronic poll books if you have electronic poll books at all. Those electronic poll books would have to be mobile or able to be moved. Some vendors don’t have poll books that attach from a stand. You’d need additional vote machines in every single voting place, which there’s not enough machines in existence that we could get our hands on to perform curbside voting in which the ballot is secret, and the voter, if they are receiving assistance, can assure that their ballot is being inserted in the tabulator and that their vote’s counting. So a multitude of things that scare me to death on that.<sup>166</sup>

Nevertheless, the district court again granted plaintiffs relief—**and again did so in the middle of an election and just 34 days before Election Day**. So again, the State appealed the ruling and obtained a stay from the U.S. Supreme Court.<sup>167</sup> The reasons were simple. Not only did the State believe that its laws did not violate the Constitution, but it would be chaotic to change election laws right before Election Day (and while voters were already voting absentee). As Benard Simelton, President of the Alabama State Conference of the NAACP (a plaintiff in the case), put it at trial when asked what efforts his organization would undertake if it “obtain[ed] relief in some counties but not others”:

<sup>164</sup> *Id.* at 1111.

<sup>165</sup> *People First*, 9/8/2021 Tr. 132-47.

<sup>166</sup> See Secretary John Merrill’s Emergency Application for Stay 6, No. 20A67 (U.S. Oct. 15, 2020).

<sup>167</sup> See *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020).

[W]e would try to educate voters on what the new agreements or procedures are. I mean, it's — and then again, we would look at it and say, well, we don't want to confuse voters. **And sometimes when you start down one path and you get in the middle of that path and you change directions, voters might become confused.**<sup>168</sup>

## VI. College Students Can Easily Vote in Alabama

The SPLC maintains that Alabama's voting laws "have an acute impact on first-time voters," and contends that Alabama discriminates against college students.<sup>169</sup> But here again, the story it tells is misleading, incomplete, and often just wrong. Fortunately, there is a better record to turn to: the one from federal court.

### A. What Really Happened at Alabama A&M University

In November 2018, four Alabama A&M University students filed suit against the Madison County Board of Registrars, the chair of that Board, and the Secretary of State.<sup>170</sup> They alleged that they had submitted voter registration applications before the November 2018 election but that their registrations had not been processed until *after* the election, thereby depriving them of the right to vote in that election. They also alleged that they were forced to cast provisional ballots and that those ballots were not counted. The students raised multiple claims, including allegations that their right to vote was denied based on race and age. This is the litigation that one of the SPLC's declarants, Monica, references in her declaration.<sup>171</sup> **She notes that the lawsuit "was dismissed,"<sup>172</sup> but fails to mention that the plaintiffs voluntarily dismissed their own case after it fell apart.**<sup>173</sup>

The plaintiffs in the A&M case filed their complaint and a motion for immediate relief. **Before the election, the plaintiffs had not submitted voter registration applications directly to the Madison County Board of Registrars or the Secretary of State, but instead had gone through third parties.** Unfortunately, their applications did not reach the appropriate election officials. On Election Day, they cast provisional ballots, and, as a result of that paperwork, three of the plaintiffs became newly registered to vote, while the fourth plaintiff had her voter registration updated from Mobile County to Madison County.

<sup>168</sup> See Appellants' Time Sensitive Motion for Administrative Stay and Stay Pending Appeal 21, *People First of Ala. v. Sec'y, State of Ala.*, No. 20-13695-B (11th Cir. Oct. 2, 2020).

<sup>169</sup> SPLC Report at 61–62.

<sup>170</sup> *Jackson v. Madison County Board of Registrars*, No. 5:18-cv-01855-MHH (N.D. Ala.).

<sup>171</sup> SPLC Ex. 40.

<sup>172</sup> *Id.* ¶ 6.

<sup>173</sup> Doc. 30, *Jackson*.

The Chair of the Board of Registrars testified at the hearing on the plaintiffs' motion. Plaintiffs' counsel did not ask about any allegations of shredded applications; those allegations appear to be new to the declarations and the SPLC report. But Plaintiffs' counsel did ask what happens to paper forms that are rejected, and the Chair testified that the applications are kept and that the voters are notified of the rejection and given an opportunity to re-apply.<sup>174</sup> **The testimony was consistent with Alabama law, which requires that applicants be notified if their voter applications are rejected.**<sup>175</sup> The law also provides an appeal process.<sup>176</sup>

After the evidence had been presented and the parties made their arguments, the court denied plaintiffs' request for injunctive relief. The court determined that the case amounted to "a chain of custody issue": The plaintiffs had timely completed voter registration forms and given them to third parties, but—for whatever reason—those applications did not timely reach election officials. The court concluded: "[B]ased on all of the evidence that the Court has received, the Court cannot say at this point that [the plaintiffs have shown a] substantial likelihood of success on the merits." For that reason, the court lifted the temporary order maintaining the *status quo* and allowed the election officials to continue with certifying the election results.<sup>177</sup> A couple of months later, the plaintiffs voluntarily dismissed the litigation.<sup>178</sup>

## B. Alabama Hosts Voter Registration Drives at College Campuses

Students and other first-time voters are subject to the same laws as other Alabama voters, though there is one special accommodation for students. Section 17-3-11(a) of the Alabama Code provides:

**The board of registrars in each county shall visit each college or university, whether public or private, having an enrollment of 500 or more, which is located therein, at least once during the school year for the purpose of registering voters, and shall remain there for one full working day, weekends and holidays excepted.**<sup>179</sup>

Thus, the Registrars are required to "visit each college or university ... at least once during the school year for the purpose of registering voters."<sup>180</sup> The Secretary of State's in-house counsel testified at the hearing in the A&M litigation that Secretary Merrill

<sup>174</sup> *Jackson*, Civil Action No. 5:18-cv-01855-MHH (N.D. Ala.), TRO transcript at 83.

<sup>175</sup> Ala. Code § 17-3-54 ("Any person making application to the board of registrars for registration who fails to establish by evidence to the reasonable satisfaction of the board of registrars that he or she is qualified to register, may be refused registration. The board shall give written notice to each applicant deemed unqualified, within 10 days of its refusal to register, stating the specific reason for such refusal.").

<sup>176</sup> Ala. Code § 17-3-55.

<sup>177</sup> *Jackson*, Civil Action No. 5:18-cv-01855-MHH (N.D. Ala.), TRO transcript at 110.

<sup>178</sup> Doc. 30, *Jackson*.

<sup>179</sup> Ala. Code § 17-3-11(a).

<sup>180</sup> *Id.*

has encouraged the Registrars “that around election time you go back and you assist those voters .... [W]e want to have as many folks registered in our [S]tate as we can, and we want to have the information up to date, so we won’t have any issues on [E]lection [D]ay.”<sup>181</sup> The Chair of the Madison County Board of Registrars also testified that the Board was on A&M’s campus for voter registration that year.<sup>182</sup>

### **C. Like All Alabama Residents, College Students Should Vote Where They Are Domiciled—Either in Person or Absentee**

The fact that registration drives are to be held on campus does not mean, as the SPLC and Monica seem to assume, that students are properly registered with their campus address. Rather, it has long been the law in Alabama “that a voter could vote only in the precinct or polling place designated for that voter’s current residence.”<sup>183</sup> A vote cast elsewhere is improper and subject to being excluded during an election contest.<sup>184</sup>

A voter’s residence is her domicile, and a voter can only have one domicile; “once a domicile is acquired, it is presumed to be a person’s domicile until a new domicile is gained in fact and intent.”<sup>185</sup> As the Alabama Supreme Court explained, “[t]he application of this general rule to students results in a general rule that their place of domicile does not change simply because they leave home to attend college.”<sup>186</sup> Thus, students, like everyone else, should expect to vote at the single polling place to which they are assigned based on their residence, or they should vote absentee if they will be absent from their assigned polling place because of school.

While one cannot say definitively when presented with a redacted declaration, it appears that the problem that one of the SPLC declarants, Jordan, experienced may have been related to a question of domicile.<sup>187</sup> Jordan states that he registered using a campus address, while his ID showed a different address.

Importantly, students who are away from their residence to attend school—like another declarant, Ja’Kimeya, was in 2016<sup>188</sup>—are eligible to vote by absentee ballot.<sup>189</sup>

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<sup>181</sup> *Jackson*, Civil Action No. 5:18-cv-01855-MHH (N.D. Ala.), TRO transcript at 36.

<sup>182</sup> *Id.* at 86.

<sup>183</sup> *Davis v. Bennett*, 154 So. 3d 114, 116 (Ala. 2014) (footnote omitted).

<sup>184</sup> *Id.* at 116–17.

<sup>185</sup> *Horwitz v. Kirby*, 197 So.3d 943, 950, 956 (Ala. 2015) (*per curiam*).

<sup>186</sup> *Id.* at 951.

<sup>187</sup> SPLC Ex. 26.

<sup>188</sup> SPLC Ex. 19.

<sup>189</sup> Ala. Code § 17-11-3(a)(4) (“Any qualified elector of this state may apply for and vote an absentee ballot ... in any primary, general, special, or municipal election, if he or she makes application in writing and meets one or more of the following requirements: . . . The person is enrolled as a student at an educational institution located outside the county of his or her personal residence, attendance at which prevents his or her attendance at the polls.”).



<sup>191</sup> See <https://www.sos.alabama.gov/sites/default/files/voter-pdfs/nvra-2.pdf>.

If an applicant would prefer to have a paper voter registration form mailed to her, she may make a request by clicking on the “Mail Me a Form” link available on the Secretary’s website.<sup>192</sup> **Additionally, Alabama offers all voters, including students, the opportunity to submit an application to vote electronically.** Applicants may click on the “Online Registration” link or the “Submit an application electronically” link at the Secretary’s website.<sup>193</sup> If one searches in Google “Register to vote Alabama,” this is the web page that is the top result.

The Secretary’s in-house counsel testified in the A&M litigation that Secretary Merrill made online registration available in 2016 because “[v]oter registration is something he believes in and wants to get more folks registered.”<sup>194</sup> **More than 600,000 applicants had used the process by the time of the November 2018 hearing.**<sup>195</sup> To complete the process, an applicant simply needs an Alabama driver’s license or Alabama non-driver’s ID, which allows the system to confirm the applicant’s identity.<sup>196</sup> Then the applicant fills in the same information that would be on the paper form.<sup>197</sup> (Of course, online voter registration portals run by third-party groups are not within the control of the State, and voters who choose to use them should be careful to whom they are giving their personal information; they should also follow up to see whether that their information was transmitted to the proper election officials.) Once the application is submitted and processed, the County Board of Registrars sends a voter identification card to the newly registered voter, providing the name and address of the assigned polling place, as well as a listing of the various districts in which the voter lives (such as state house and state senate districts).<sup>198</sup>

There have been some problems with confirmation cards mailed to A&M students being returned to the Board of Registrars rather than delivered to the student. As became clear in the A&M litigation, the problem was with how mail was delivered at the university. The Chair of the Madison County Board of Registrars testified about the issue:<sup>199</sup>

Q. Has there been some sort of issue with A&M registrations involving mail? If you know, can you tell me what it is?

A. What are you referring to, the mail returning?

Q. Yes, ma’am.

A. Yes, ma’am, it has.

<sup>192</sup> See <https://www.sos.alabama.gov/alabama-votes/voter/register-to-vote>.

<sup>193</sup> See <https://www.sos.alabama.gov/alabama-votes/voter/register-to-vote>.

<sup>194</sup> *Jackson*, Civil Action No. 5:18-cv-01855-MHH (N.D. Ala.), TRO transcript at 30.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 32.

<sup>197</sup> *Id.*

<sup>198</sup> See <https://www.sos.alabama.gov/alabama-votes/voter/register-to-vote>; see also Ala. Code § 17-3-51.

<sup>199</sup> *Jackson*, Civil Action No. 5:18-cv-01855-MHH (N.D. Ala.), TRO transcript at 76–77.



Q. And what is the problem?

A. We visited A&M, the United States Post Office out there. If the students have a post office box on campus, their mail is delivered to the post office.

It's my understanding talking with the postmaster and the gentleman that handles the mailing for the students that anything that does not have a post office box goes to the student center, and the students are required to pick up their mail at that location.

The postal guy there, if they don't pick up their cards, he says he has no other recourse but to send them back to us. Evidently, the students do not have a mail box at their dorms, and they pick them up at one central location.

Q. When you receive that mail back, do you take any action in the PowerProfile system?

A. Yes, ma'am. We have to place them on an inactive, because if they don't accept their mail, we treat them just like we do anyone else that's returned by the post office. They go inactive. That does not stop them from voting. They just have to go and reaffirm that that is their address.

Q. So they don't vote a provisional ballot, they vote a regular ballot?

A. Yes, ma'am.

Q. They just fill out an extra form to update their registration?

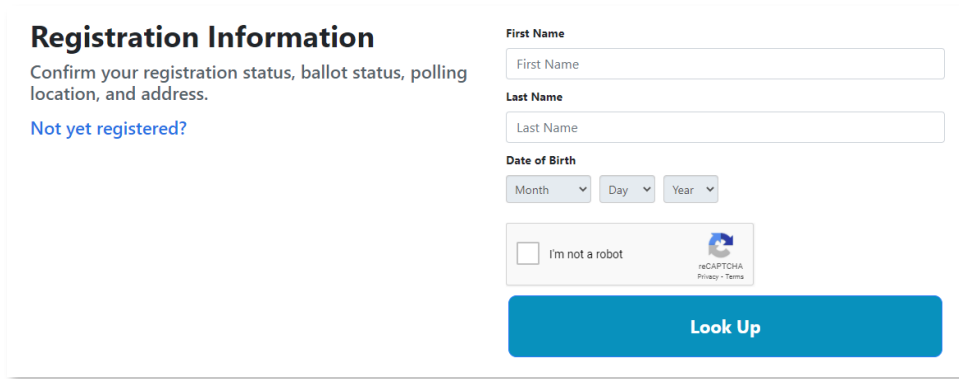
A. That is correct.

When the confirmation card is returned to the Board of Registrars, the intended recipient is made "inactive" in the system. **"Inactive" status does not prevent the student from voting, and it does not require the student to cast a provisional ballot.** Rather, the voter simply fills out an updated form when she goes to vote, and then casts a regular ballot. Importantly, this is not what happened to the plaintiffs in the A&M litigation because they were not registered to vote in Madison County at all; that is why they were provided provisional ballots.

As noted above, voters can easily check their voter registration status ahead of an election on the Secretary of State's website.<sup>200</sup> (Again, the website is the top result if one simply Googles "Alabama voter registration status.") Completing the form allows a voter to confirm her voter registration status and see polling location and other information:

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<sup>200</sup> See <https://myinfo.alabamavotes.gov/voterview>.



**Registration Information**  
Confirm your registration status, ballot status, polling location, and address.

[Not yet registered?](#)

**First Name**  
First Name

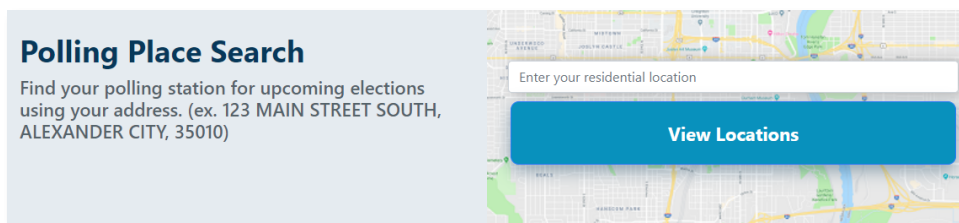
**Last Name**  
Last Name

**Date of Birth**  
Month Day Year

☐ I'm not a robot

**Look Up**

The same website has a tool specifically for polling places, which allows a voter to find her polling place based on her address:

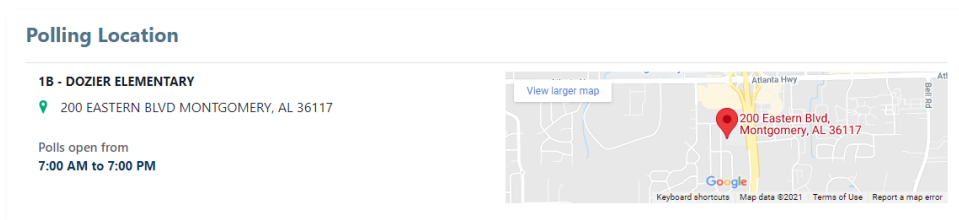


**Polling Place Search**  
Find your polling station for upcoming elections using your address. (ex. 123 MAIN STREET SOUTH, ALEXANDER CITY, 35010)

Enter your residential location

**View Locations**

The polling location information provided includes the address, poll hours, and a map. For example:



**Polling Location**

**1B - DOZIER ELEMENTARY**  
200 EASTERN BLVD MONTGOMERY, AL 36117

Polls open from  
7:00 AM to 7:00 PM

[View larger map](#)

200 Eastern Blvd, Montgomery, AL 36117

Thus, voter registration is readily accessible and easy to check. Imposition of a preclearance regime would not have changed the fact that those who wish to vote must register to do so in advance of the election.

## VII. Alabama Maintains Its Voter Rolls as Federal Law Requires

The SPLC next faults Alabama’s voter registration system for following federal law. Despite acknowledging that “[r]esponsible maintenance of voter rolls is not controversial” and that Alabama implemented its maintenance process “based on” the National Voter Registration Act of 1993 (“NVRA”) and the Help America Vote Act of 2002 (“HAVA”), the SPLC nevertheless charges that Alabama’s process is a “guise” to “inappropriately remove[] voters from its rolls.”<sup>201</sup> **Here again, the facts tell a different story.** Though the SPLC takes issue with Alabama’s process of sending a forwardable postcard to verify that a voter still resides at her current address, that is exactly what

<sup>201</sup> SPLC Report at 77–78.

the NVRA provides.<sup>202</sup> And though the SPLC also takes issue with Alabama’s process of removing those voters who fail to respond to the postcard after they have failed to vote in two subsequent federal elections, that is—again—the process the NVRA provides.<sup>203</sup> **Although the SPLC casts Alabama’s voter maintenance efforts as inappropriate, the SPLC’s issues appear to be with federal law rather than Alabama’s voter maintenance system itself.**

Consistent with these federal requirements, Alabama performs voter roll maintenance every four years. If election officials are unable to contact a voter after multiple attempts, the voter is placed on “inactive status.” A voter is thereafter removed from the rolls only if the voter then fails to update her registration within the **next four years**. The Secretary of State explains the procedures used prior to 2021 as follows:

The National Voter Registration Act of 1993 requires each state to implement a systematic process for removing from the voter rolls those individuals who are no longer qualified to vote, including people who have moved and not updated their voter registration record. To comply with this requirement, the Office of the Secretary of State will be mailing a postcard to all registered voters in the State of Alabama during the month of January.

This voter file maintenance program is a four-year program which utilizes a two-step mailing process to identify voters who may have moved. In January of 2021, a nonforwardable postcard is mailed to every registered voter in the state. If this postcard is returned undeliverable, the voter is sent a second mailing that is forwardable. In the second mailing, the voter is requested to update his or her address, since the first postcard was undeliverable. If this second mailing is returned undeliverable, or if the voter does not respond to it, then the voter’s status is changed to “inactive” and the voter’s name is placed on a suspense list. Under state law, a voter placed on the suspense list is to be removed from the voter list if he or she does not submit an update to the voter registration record or vote within the next four years.<sup>204</sup>

As the SPLC acknowledges, this process will change beginning in 2025, with the nonforwardable postcard step being traded for “change-of-address information supplied by the United States Postal Service” and corroborated by at least one other voter registration database.<sup>205</sup>

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<sup>202</sup> See 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2).

<sup>203</sup> *Id.* § 20507(d)(1)(B)(ii).

<sup>204</sup> *Alabama Secretary of State’s Office Continues in Commitment to Maintaining Accurate and Up-To-Date Voter Rolls*, Office of the Alabama Secretary of State (Dec. 4, 2020), <https://www.sos.alabama.gov/newsroom/alabama-secretary-states-office-continues-commitment-maintaining-accurate-and-date-voter>; see also Ala. Act 95–769 § 2 (adopting this process, which was later codified in Alabama Code § 17-4-30 until being revised in 2021).

<sup>205</sup> See Ala. Code § 17-4-30(a).

Regardless, and despite all its handwringing, **the SPLC does not identify any voters who were unable to cast a ballot because they had been removed from the voter rolls.** Instead, the voters the SPLC identifies as “prevented” from voting due to faulty list maintenance testified that they: were able to cast either a regular or provisional ballot;<sup>206</sup> were told they needed to go to a different polling place where they were registered but refused to do so;<sup>207</sup> or received a letter providing instructions for how to apply for an absentee ballot that was misaddressed.<sup>208</sup> All other testimony the SPLC cites concerning voter maintenance provides no more than speculation or hearsay. While Alabama takes seriously any issue with the voting process, the SPLC has not presented the testimony of even one active, eligible voter who was prevented from voting because of Alabama’s voter maintenance process. And yet, despite the dearth of evidence it comes with, the SPLC contends that Alabama’s voter maintenance system, following federal law, requires the reimposition of preclearance. Here as elsewhere, the evidence does not support such a claim.

## VIII. Felons Convicted of Certain Offenses Lose the Right to Vote, but the State Offers Many the Chance to Regain It

The SPLC’s treatment of felon voting is likewise misleading and misguided. It also irrelevant to the report’s main thesis arguing in favor of reimposing preclearance, for nothing about the preclearance process would have addressed the SPLC’s ill-founded concerns.

Criminal disenfranchisement “is of ancient origin” and was practiced by the Romans and Greeks.<sup>209</sup> It “was a feature of American law during the colonial era” and “continued in the first century after American independence.”<sup>210</sup> As the en banc Eleventh Circuit Court of Appeals has explained, felon disenfranchisement “laws are deeply rooted in this Nation’s history.”<sup>211</sup> And as the Supreme Court long ago recognized, the Fourteenth Amendment of the U.S. Constitution even includes “an affirmative sanction” for “the exclusion of felons from the vote.”<sup>212</sup>

Alabama has always recognized this “ancient” practice, with each of the State’s six constitutions providing for it. For much of this history, blacks were not allowed to

<sup>206</sup> See SPLC Report at 80-81, Ex. 22 (Jenene [Russell County] Decl.) ¶ 8, Ex. 54 (William [Morgan County] Decl.) ¶ 7.

<sup>207</sup> See SPLC Report at 80-81, Ex. 12 (Curtis [Jefferson County] Decl.) ¶¶ 6, 9.

<sup>208</sup> See SPLC Report at 81, Ex. 3 (Arametta [Calhoun County] Decl.) ¶¶ 4-6.

<sup>209</sup> *Hayden v. Pataki*, 449 F.3d 305, 316 (2d Cir. 2006) (*en banc*); Expert Report, *Thompson v. Merrill*, 2:16-cv-783-ECM-SMD, doc. 257-1 at 4-6.

<sup>210</sup> Expert Report, *Thompson*, doc. 257-1 at 6; see also *Hayden*, 449 F.3d at 316.

<sup>211</sup> *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1228 (11th Cir. 2005) (*en banc*) (footnote omitted).

<sup>212</sup> *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974).

vote—a grave injustice, but one that shows that felon disenfranchisement in Alabama was not a product of Jim Crow.

The 1819, 1861, and 1865 constitutions of Alabama all either disenfranchised certain criminals or authorized the Legislature to do so.<sup>213</sup> Next was the 1868 Constitution, which was drafted during the Reconstruction by a legislature “dominated by Radical Republicans and African Americans.”<sup>214</sup> “The resulting Constitution was sweeping in felon disenfranchisement, in some ways more sweeping in this respect than the Constitutions of 1819, 1861, or 1865 or, for that matter, most other States. It disenfranchised for ‘treason, embezzlement of public funds, malfeasance in offices, crimes punishable by law with imprisonment in the penitentiary, or bribery’ as well as for violating the ‘rules of civilized warfare.’”<sup>215</sup> “The 1875 Constitution (which reflected the end of Reconstruction in Alabama) continued the all-inclusive mandate of depriving suffrage for ‘treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary.’”<sup>216</sup>

Section 182 of Alabama’s 1901 Constitution continued felon disenfranchisement and added a laundry list of other disqualifying convictions.<sup>217</sup> Admittedly, some of the crimes on the list were included on the theory that the crimes were more likely to be committed by blacks and poor whites.<sup>218</sup> But over the years, portions of the 1901 provision were held unconstitutional and thus they no longer applied. In 1985, for example, the U.S. Supreme Court in *Hunter v. Underwood* held that the provision as applied to misdemeanants was unconstitutional.<sup>219</sup>

While the SPLC contends that the State lacked any “basis in the Supreme Court’s opinion” in *Hunter* for thereafter continuing to apply Section 182 to disenfranchised felons, the question of *felon* disenfranchisement—as opposed to *misdemeanant* disenfranchisement—was not before the Court. Because “[f]ederal courts do not possess a roving commission to publicly opine on every legal question,”<sup>220</sup> the part of the law the Supreme Court did not opine on—the felon disenfranchisement part—could still be enforced. That is particularly true when it comes to *Hunter* because, at the time, the Court had just recently approved of felon disenfranchisement in *Richardson v. Ramirez*.<sup>221</sup>

<sup>213</sup> See Ala. Const. of 1819 art. VI, § 5; Ala. Const. of 1861 art. VI, § 5; Ala. Const. of 1865 art. VIII, §1.

<sup>214</sup> Expert Report, *Thompson*, doc. 257-1 at 11 (emphasis added; footnote omitted); see also Ala. Const. of 1868 art. VII, § 3.

<sup>215</sup> *Id.*

<sup>216</sup> Expert Report, *Thompson*, doc. 257-1 at 12 (emphasis added); see also Ala. Const. of 1875 art. VIII § 3.

<sup>217</sup> *Hunter v. Underwood*, 471 U.S. 222, 223 n. \*\* (1985).

<sup>218</sup> *Id.* at 229–33.

<sup>219</sup> *Id.* at 225; see also *Hobson v. Pow*, 434 F. Supp. 362, 367 (N.D. Ala. 1977) (holding that the “assault and battery on the wife” clause violates Equal Protection).

<sup>220</sup> *TransUnion LLC v. Ramirez*, 594 U.S. \_\_\_, 141 S. Ct. 2190, 2203 (2021).

<sup>221</sup> 418 U.S. 24 (1974).

Though Alabama has not held a constitutional convention since 1901, it has amended the 1901 Constitution a total of 977 times, as reflected on the Alabama Legislature’s website.<sup>222</sup> That website sets out the original Constitution and each Amendment, so the SPLC is correct that the website “gives no indication that [Section 182] has been invalidated.”<sup>223</sup> That is, even if Section 182 had been invalidated, noting that fact is not the function of the website, which sets out the Constitution as originally enacted and then each adopted amendment. (For a State with over 900 amendments, that is a very useful function by itself.)

### **A. The 1996 Felony Disenfranchisement Amendment Was Widely Supported, Narrowed Which Felonies Qualified, and Received Preclearance by the Department of Justice**

Amendment 579 to the 1901 Constitution of Alabama contains the complete repeal and replacement of the Suffrage and Elections Article of the Constitution. The literacy tests, poll tests, and the misdemeanor provision at issue in *Hunter* were all repealed. The new provision, found in Section 177 of the Constitution, provides in relevant part: “No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.”<sup>224</sup> Section 177 has been twice more amended, but this language is unchanged.<sup>225</sup>

The history of this provision is worth recounting. It was proposed by the Legislature in 1995 and passed both houses unanimously.<sup>226</sup> (At the time, the House was 23% black and the Senate was 26% black.<sup>227</sup>) The proposed amendment was considered by the electorate at the June 4, 1996 primary election. In the lead up to the election, the *Montgomery Advertiser* issued an editorial encouraging voters to support the proposed constitutional amendment because the amendment “str[uck] out a great deal of outdated and indefensible language on voting rights in Alabama.”<sup>228</sup> Phillip Rawls likewise wrote for the Associated Press in support of the amendment: “If you read Alabama’s constitution, you’d think you couldn’t vote in Alabama unless you are a white-male who owns property, can read the U.S. Constitution and has paid a poll tax. Everyone knows that’s no longer true ... but no one had ever brought Alabama’s constitution up to date.”<sup>229</sup> The amendment was designed to change that—to “reflect[] the

<sup>222</sup> See [http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/Constitution/1901/Constitution1901\\_-toc.htm](http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/Constitution/1901/Constitution1901_-toc.htm).

<sup>223</sup> SPLC Report at 67 n.400.

<sup>224</sup> Ala. Const. art. VIII, § 177(b).

<sup>225</sup> Amendments 865 and 949 made changes to Ala. Const. art. VIII, § 177.

<sup>226</sup> See Ala. Acts No. 95-443; see also Tr. of House Proceedings, *Thompson*, doc. 257-24 at 18-19; Tr. of Senate Proceedings, *Thompson*, doc. 257-25 at 24.

<sup>227</sup> See NAMUDNO Brief 22a (reproducing Bullock-Gaddie Table 5).

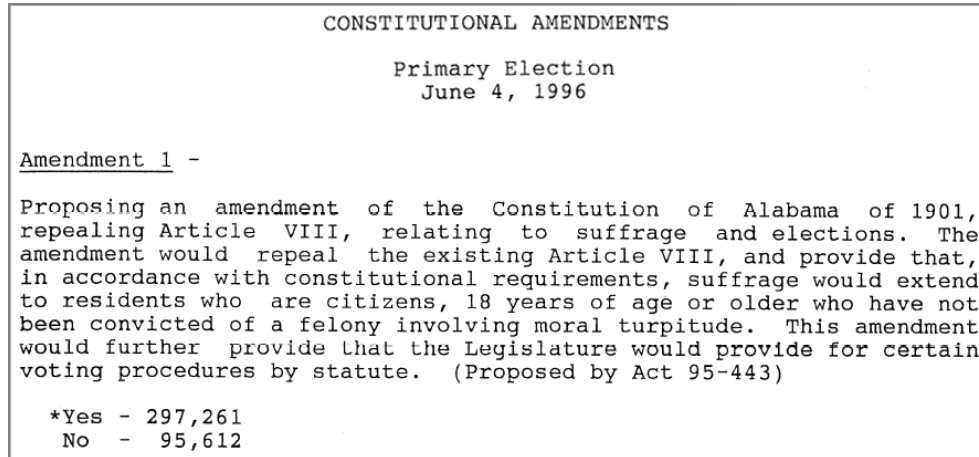
<sup>228</sup> Expert Report, *Thompson*, doc. 257-17, at 51–52 (footnote and emphasis omitted).

<sup>229</sup> *Id.* at 52.



voting requirements of the state today, rather than in 1901 when the constitution was written,” as the House sponsor, Representative Jack Venable, put it.<sup>230</sup>

The proposed Amendment was overwhelmingly adopted, as an excerpt from the Certification of Results shows:



It should go without saying that the Alabama voters of 1996 were not the same people who attended the 1901 Alabama Constitutional Convention. And expert testimony in federal court litigation established that the amendment was approved by 70% or more of the voters in 46 of the State’s 67 counties, and carried at least 60% of the vote in 94% of the counties.<sup>231</sup> The proposed amendment was rejected by voters in Lowndes County (majority black) and Washington County (majority white), though it carried at least 45% of the vote in both counties.<sup>232</sup>

The amendment also received substantial support in majority black counties other than Lowndes County.<sup>233</sup> For example, “[i]n Macon County, where the black population in 1996 was 85.6 percent of the entire county’s population, voters supported passage of Amendment 1 by 75.26 percent of the vote.”<sup>234</sup> Further, at the time, Jefferson, Mobile, Madison and Montgomery counties were the largest in the State and their “diverse population[s]” “overwhelmingly supported the passage of Amendment 1” at rates exceeding 75%.<sup>235</sup> The expert thus concluded: **“There is no relationship between the racial composition of a county and the degree of support [within that county] for the 1996 amendment.”**<sup>236</sup>

While SPLC presents the 1996 amendment as reintroducing the moral turpitude concept, the amendment **repealed** the 1901 provision and **narrowed** the category of

<sup>230</sup> *Id.* (footnote omitted).

<sup>231</sup> Expert Report, *Thompson*, doc. 257-17 at 53.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 56.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 55–56.

<sup>236</sup> *Id.* at 57.



criminals disenfranchised from all felons to only those whose felonies involved moral turpitude. “Moral turpitude” is a long-established legal phrase, and the transcripts of the multiple efforts at constitutional revision that led to the 1996 amendment generally reflect that the legislators discussing the phrase thought it covered most felonies and targeted only serious conduct. While a comprehensive list of moral turpitude felonies was not included in the constitutional amendment (though it was added by statute in 2017), the concept was well developed in the common law. Registrars charged with implementing the provision had court decisions and Attorney General opinions available to guide them.<sup>237</sup>

The SPLC is correct that George Wallace was indeed Governor during some of the time when the constitutional revision efforts were ongoing. But Wallace was not leading the efforts, and he did not propose the moral turpitude language. Rather, Dr. Samuel A. Beatty, who was then the Dean of the Walter F. George School of Law at Mercer University and would later serve an Associate Justice on the Supreme Court of Alabama, prepared a report in October 1970 which proposed the repeal and replacement of the Suffrage and Elections Article. He did so based on a comparison of language in other State Constitutions, and without any indication that he was trying to discriminate based on race. He wrote:

State constitutions commonly include like provisions disqualifying mental incompetents and persons convicted of crimes. As statutory offenses grow or change, their inclusion or exclusion becomes a matter of constitutional interpretation or constitutional amendment. Examples: (a) possession and sale of dangerous drugs; (b) no longer may miscegenation be a crime under the U.S. Constitution, *Loving v. Virginia*, 388 U.S. 1 (1966); (c) vagrancy as a disqualification may be unconstitutional, *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966). It would appear sufficient to describe such disqualifications in general terms, thus overcoming these objections and eliminating a longer, scattered and redundant list of disqualifying crimes.

Florida’s provision, Art. 6, § 4, is short and to the point: “No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.” Maryland has a similar provision, Art. 1, § 2: “No person above the age of twenty-one years, convicted of larceny, or other infamous crime, unless pardoned by the Governor, shall ever thereafter be entitled to vote at any election in this state....” Illinois’ Constitution directs the legislature to exclude from the right of suffrage

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<sup>237</sup> See, e.g., A.G. Op. No. 2005-092, Opinion to Hon. William C. Segrest, Executive Director, Board of Pardons and Paroles (Mar. 18, 2005).

persons convicted of "infamous crimes," and excludes idiots and insane persons by judicial decision.<sup>238</sup>

Moreover, and perhaps most notably for the SPLC's thesis that Alabama's felon disenfranchisement law proves the need for preclearance, **the 1996 amendment was precleared by the Department of Justice:**

June 24, 1996

Lynda K. Oswald, Esq.  
Assistant Attorney General  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130

Dear Ms. Oswald:

This refers to Act No. 95-443 (1995), which provides for the repeal of Article VII of the Constitution of Alabama of 1901, establishes qualifications for voting and provides for the establishment of registration requirements and registration procedures by statute, and to the procedures for conducting the June 4, 1996, constitutional amendment election for the State of Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 23, 1996; supplemental information was received on June 10 and 20, 1996.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

- 2 -

The constitutional amendment effected by the referendum approval of Act No. 95-443 includes provisions that are enabling in nature. Therefore, any changes affecting voting that are adopted pursuant to this legislation will be subject to Section 5 review (e.g., changes to existing voting qualifications, registration requirements or registration procedures). See 28 C.F.R. 51.15.

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

By:



for Elizabeth Johnson  
Acting Chief, Voting Section

<sup>238</sup> Samuel A. Beatty, Report on Suffrage and Elections Article (Oct. 1970); *Thompson*, doc. 257-19 at 10.

## B. Felonies Involving Moral Turpitude Are Listed by Statute, Make Sense, and Are Not Based on Race

In 2017, Alabama enacted a statute listing—and limiting—which felonies are ones involving “moral turpitude” for felon disenfranchisement purposes.<sup>239</sup> The legislation was enacted at the urging of Secretary Merrill. Contrary to the SPLC’s suggestion that the Act was a clarification of what the law had always been, it was new legislation that comprehensively listed the felonies considered disenfranchising under Alabama law from the time it took effect onward. In other words, the fact that the 2017 Act effectively re-enfranchised some felons does not mean that they were improperly disenfranchised *before*. One of the plaintiffs in the felon disenfranchisement litigation, for instance, had properly been disenfranchised under the Alabama Constitution for stalking, but was re-enfranchised when the Legislature enacted a **narrower** list in 2017.

Far from being race-based, the list of felonies involving moral turpitude include felonies that most anyone would consider serious and—yes—involving moral turpitude. They are:<sup>240</sup>

- Murder
- Manslaughter
- Assault
- Kidnapping
- Rape
- Sodomy by force or with a child
- Sexual torture
- Sexual abuse
- Enticing a child to enter a vehicle for immoral purposes
- Facilitating solicitation of unlawful sexual conduct with a child
- Electronic solicitation of a child
- Facilitating the online solicitation of a child
- Traveling to meet a child of an unlawful sex act
- Facilitating the travel of a child for an unlawful sex act
- Human trafficking
- Terrorism

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<sup>239</sup> Ala. Act No. 2017-378. In 2019, the State created a new felony of aggravated theft by deception and added it to the list of disenfranchising felonies. *See* Ala. Act No. 2019-513; *see also* Ala. Code § 17-3-30.1 (codifying, as relevant here, Ala. Act Nos. 2017-378 & 2019-513).

<sup>240</sup> Ala. Code § 17-3-30.1. The Code provision provides further definitions of these crimes and cross-references the specific statute relevant to each crime. This listing has been cleaned up for readability.

- Soliciting or providing support for terrorism
- Hindering prosecution of terrorism
- Endangering the water supply
- Possession, manufacture, transport, or distribution of a destructive device or biological weapon
- Selling, furnishing, giving away, delivering, or distribution of a destructive device, a bacteriological weapon, or biological weapon to a person who is less than 21 years of age
- Possession, manufacture, or distribution of a detonator, explosive, poison, or hoax device
- Attempt or conspiracy to commit an explosives or destructive device or bacteriological or biological weapons crime
- Hindrance or obstruction during detection, disarming, or destruction of a destructive device or weapon
- Possession or distribution of a destructive device or weapon intended to cause injury
- Treason
- Dissemination or public display of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts
- Possession and possession with intent to disseminate obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts
- Parents or guardians permitting children to engage in production of obscene matter
- Production of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts
- Distribution, possession with intent to distribute, production of obscene material, or offer or agreement to distribute or produce
- Trafficking in cannabis (more than 2.2 pounds), cocaine (28 grams or more), amphetamine, methamphetamine, or other illegal drugs
- Bigamy
- Incest
- Torture or other willful maltreatment of a child
- Aggravated child abuse

- Prohibited acts in the offer, sale, or purchase of securities
- Burglary
- Aggravated theft by deception
- Theft of property or lost property (more than \$1,500 in value)
- Theft of trademarks or trade secrets
- Robbery
- Forgery
- Any crime as defined by the laws of the United States or by the laws of another state, territory, country, or other jurisdiction, which, if committed in this state, would constitute one of the offenses listed above.

### C. Many Felons Can Regain the Right to Vote

The Alabama Board of Pardons and Paroles has—and had at the time of the 1996 amendment and its preclearance by DOJ—the authority and power, “after conviction and not otherwise,” to “grant pardons and paroles and remit fines and forfeitures” “[i]n all cases, except treason and impeachment and cases in which [a] sentence of death is imposed and not commuted.”<sup>241</sup> This is one way felons can regain the right to vote.

In 2003, Alabama also created the Certificate of Eligibility to Register to Vote (“CERV”), which made it possible for certain disenfranchised felons to get their voting rights back without going through the more time-consuming and discretionary pardon process.<sup>242</sup> This statutory change was not required by any federal law or federal oversight, but was precleared by the Department of Justice.

**Recently, and again on its own initiative, Alabama revised the CERV process to make re-enfranchisement even easier and faster.**<sup>243</sup> To take advantage of the program, a felon must:

- Successfully complete the sentence (including probation or parole), or be pardoned;
- Pay certain fines, court costs, fees, and victim restitution;
- Not have any pending felony charges;
- Not have been convicted of one of the specified felonies that are ineligible for the CERV process—treason, murder, impeachment, various sex crimes, or child pornography crimes.<sup>244</sup>

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<sup>241</sup> Ala. Code § 15-22-36(a).

<sup>242</sup> Ala. Act No. 2003-415.

<sup>243</sup> Ala. Act No. 2016-387; *see also* Ala. Code § 15-22-36.1.

<sup>244</sup> *See* Ala. Code § 15-22-36.1.

The SPLC laments Alabama's choice to require felons to have paid certain fines, court costs, fees, and victim restitution before regaining the right to vote, but that speaks more to the SPLC's own policy preferences than what the law requires. Again, the 2003 law was precleared by the Department of Justice and, at that time, it required payment of all fines, court costs, fees, and victim restitution that the felon owed on any conviction. And the 2016 law narrowed the requirement to just those monies "ordered by the sentencing court at the time of sentencing on the disqualifying cases."<sup>245</sup> Hence, if preclearance had been required in 2016, it is hard to imagine it would not have been granted.

Finally, citizens are presumed to know the law, and that includes the law of felon disenfranchisement. Even so, the Alabama Board of Pardon and Paroles makes information about CERVs and pardons available on its website—including this helpful poster:<sup>246</sup>

## Convicted of a felony? You may still be able to vote.

1. Not convicted of a felony in the BLUE list below OR convicted of a misdemeanor?  
You can vote! Register today. Contact your local Board of Registrars or the Secretary of State's office.

2. Convicted of a felony in the BLUE list below?  
You might be able to restore your right to vote. Learn more in the RED box below.

### List of felonies that require restoration:

Current through April 9, 2020.  
For a current list, please see [sos.alabama.gov/mtfelonies](https://sos.alabama.gov/mtfelonies).

- Aggravated child abuse
- Aggravated theft by deception
- Assault (except DUI of alcohol/controlled substance)
- Attempt to commit an explosive or destructive device or bacteriological or biological weapons crime
- Bigamy
- Burglary (I and II degrees)
- Conspiracy to commit an explosive or destructive or bacteriological or biological weapons crime
- Dissemination or public display of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts
- Distribution, possession with intent to distribute, production of obscene material, or offer/agreement to distribute or produce obscene material
- Electronic solicitation of a child
- Endangering the water supply
- Enticing a child to enter a vehicle, house, etc. for immoral purposes
- Facilitating online solicitation of a child
- Facilitating solicitation of unlawful sexual conduct with a child
- Facilitating the travel of a child for an unlawful sex act
- Forgery (I and II degrees)
- Hindrance or obstruction during detection, disarming, or destruction of a destructive device or weapon
- Hindering prosecution of terrorism
- Human trafficking
- Incest
- Kidnapping (I and II degrees)
- Manslaughter
- Murder
- Parents or guardians permitting children to engage in production of obscene matter
- Possession and possession with intent to disseminate obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts
- Possession or distribution of a destructive device or weapon intended to cause injury or destruction
- Possession or distribution of a hoax device represented as a destructive device or weapon
- Possession, manufacture, transport, or distribution of a destructive device or bacteriological weapon or biological weapon
- Possession, manufacture, transport, or distribution of a detonator, explosive, poison, or hoax device
- Production of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts
- Prohibited acts in the offer, sale, or purchase of securities
- Rape (any degree)
- Robbery (any degree)
- Selling, furnishing, giving away, delivering, or distribution of a destructive device, a bacteriological weapon, or biological weapon to a person less than 21 years of age
- Sexual abuse (any degree)
- Sexual abuse of a child less than 12 years old
- Sexual torture
- Sodomy (any degree)
- Soliciting or providing support for an act of terrorism
- Terrorism
- Theft of lost property (I and II degrees)
- Theft of property (I and II degrees)
- Theft of trademarks or trade secrets
- Torture or other willful maltreatment of a child under 18 years of age
- Trafficking in cannabis, cocaine, or other illegal drugs or trafficking in amphetamine and methamphetamine
- Traveling to meet a child for an unlawful sex act
- Treason

Any crime as defined by the laws of the United States or by the laws of another State, territory, country, or other jurisdiction, which, if committed in Alabama, would constitute one of the felonies listed above.

### Do you meet all four requirements?

☐ You do NOT have any pending felony charges.

☐ You HAVE paid in full all fines, court costs, fees and victim restitution ordered at the time of sentencing on disqualifying cases.

☐ You HAVE completed your sentence, including probation or parole.

☐ You were NOT convicted of:

- Enticing a child to enter a vehicle for immoral purposes
- Impeachment
- Incest
- Murder
- Parents or guardians permitting children to engage in obscene matter
- Possession of obscene matter
- Possession with intent to distribute child pornography
- Production of obscene matter involving a minor
- Rape (any degree)
- Sexual abuse (any degree)
- Sexual torture
- Sodomy (any degree)
- Soliciting a child by computer
- Treason

Yes, I meet all four requirements.

You can restore your right to vote by obtaining a Certificate of Eligibility to Register to Vote.  
COMPLETE: **ABPP-4 CERV Application**


No, I still owe fines, court costs, fees or victim restitution.

You may be able to get your monies owed forgiven by requesting relief from the court or the Board of Pardons and Paroles.


FILE a request with the court. Example: **AOC E-Form to Request to Reprioritize Costs** ([eforms.alacourt.gov](https://eforms.alacourt.gov))  
OR COMPLETE: **ABPP-5 Remission of Fine and Forfeiture Application**

No, I was convicted of one of the felonies in the RED list above.

You may apply for a pardon to be considered for the restoration of your civil and political rights from the Board of Pardons and Paroles in all cases, except treason, impeachment, and cases in which a sentence of death is imposed and not commuted.  
COMPLETE: **ABPP-3 Pardon Application**



Scan this code to access additional information and forms.



Prepared in collaboration with the  
Office of the Alabama Secretary of State.

<sup>245</sup> Ala. Code § 15-22-36.1(a)(3).

<sup>246</sup> See <https://paroles.alabama.gov/about-us/pardons-restoration-of-voting-rights/>.



The website also includes a CERV application form<sup>247</sup> and contact information for the Board of Pardons and Paroles so felons can reach out for help.

Ultimately, the SPLC simply disagrees with Alabama’s policy choice to disenfranchise certain felons. That’s fine. But the path Alabama chose is a legitimate one, and is certainly no reason to depart from the ordinary relationship between the state and federal governments. After all, as Judge Friendly put it for the Second Circuit in response to a challenge of New York’s law: “[I]t can scarcely be deemed unreasonable for a state to decide that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further violations, or the judges who are to consider their cases.... A contention that the equal protection clause requires New York to allow convicted mafiosi to vote for district attorneys or judges would not only be without merit but as obviously so as anything can be.”<sup>248</sup>

## IX. Alabama’s Decentralized Voting System Works for Voters

Like many States, Alabama provides its different counties and political subdivisions broad authority to conduct and regulate election processes. But the SPLC claims that such a “decentralized and neglected election infrastructure both actively causes and fails to remedy the challenges Alabama voters face,” which produces “profoundly adverse consequences for Black voters.”<sup>249</sup> As with much of its report, the SPLC provides no foundation for these sensational claims. Indeed, any evidence of “profoundly adverse consequences” is noticeably absent from the report, and the SPLC never even tries to show that Alabama’s decentralized election system perpetrates racial discrimination of any kind (perhaps a relevant inquiry for a report about “Alabama’s unyielding record of racial discrimination in voting”). In any event, aside from baselessly asserting that the “true goal” underlying the Secretary of State’s election-integrity efforts is “intimidating voters from exercising their right to vote,”<sup>250</sup> the SPLC also impugns Alabama’s election-official training and castigates the State’s decentralized election process. None of these arguments has merit.

Start with training and resources. The SPLC alleges that “[i]n large part because of the State’s failure to invest adequately in its election infrastructure, county election

<sup>247</sup> See <https://paroles.alabama.gov/wp-content/uploads/ABPP-4-CERV-Application-Form-Fillable-1-1.pdf>.

<sup>248</sup> *Green v. Bd. of Elections of City of New York*, 380 F.2d 445, 451–52 (2d Cir. 1967).

<sup>249</sup> SPLC Report at 81–82.

<sup>250</sup> SPLC Report at 83. To support this striking accusation, the SPLC cites a previous report it published: *Alive and Well: Voter Suppression and Election Mismanagement in Alabama* 15, S. Poverty Law Ctr. (2020). But the cited page never discusses Secretary Merrill’s motivations, much less supports a contention about any nefarious “true goal” underlying his work as Secretary of State. Even the SPLC’s own work does not support the claims it makes in the latest report.



offices are often under-resourced, understaffed, underqualified, and undertrained.”<sup>251</sup> But, as with its other arguments, the SPLC provides **no support** for this conjecture. While the next three pages of the report discuss Alabama’s boards of registrars, poll workers, and probate judges, the SPLC never explains what aspects of Alabama’s resourcing, staffing, qualifying, or training are allegedly insufficient. Instead, the SPLC simply relies on ominous and vague admonitions about the importance of properly training county-level election officials.<sup>252</sup> Alabama agrees that training is important, of course, which is why the State provides it.<sup>253</sup> The question for the SPLC is: Where is the evidence that Alabama’s election officials are facing a crisis of training that warrants federal oversight? It is absent from the report. (And, one wonders, how would adding to the responsibilities of local officials by requiring them to keep the polls open for weeks on end and offer curbside voting—as the SPLC wants them to do—help matters?)

The report also chastises the Secretary of State for removing a registrar “*only after* an investigation was conducted and, following a hearing, a judge determined the registrar was improperly telling voters they could register using their business addresses.”<sup>254</sup> While the State regrets that removal was necessary, it stands behind its decision to afford the registrar due process of law before permanent removal from office. Would the SPLC have preferred the State not follow due process?

Next, the SPLC turns its attention to Alabama’s open records laws, asserting that “the average turnaround time for a [public-records] request is 76 days, a statistic which has led Alabama to be ranked last in the nation in open records request compliance.”<sup>255</sup> As a threshold matter, the SPLC does not even try to tie this allegation to decentralization (let alone to a supposed need for preclearance). Equally detrimental is the “evidence” the SPLC relies on to support its claim: an online opinion column citing an unpublished, non-peer-reviewed article that a journalism professor prepared for a conference in Brazil.<sup>256</sup> Regardless, Alabama’s supposed turnaround is, according to the cited study, roughly twice as fast as Washington, D.C.’s response time.<sup>257</sup> Given that the Constitution vests Congress with control over Washington,<sup>258</sup> even on its own

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<sup>251</sup> SPLC Report at 85.

<sup>252</sup> See SPLC Report at 85 (“If a county register [sic] is not qualified or well-trained, it can create obstacles for voters.”); *id.* at 86 (alleging properly training poll workers “often makes the difference in whether a voter is able to successfully cast a ballot or is unjustly disenfranchised”); *id.* at 88 (“If a probate judge fails to properly select and train poll workers, it can dramatically impact whether Alabamians can exercise their right to vote.”).

<sup>253</sup> See Election Handbook § 5.3.3 (describing poll-worker instruction and explaining, among other things, that the “Secretary of State’s Office provides, at the request of the judges of probate, training aids and technical assistance to counties”).

<sup>254</sup> SPLC Report 89–90 (emphasis added).

<sup>255</sup> SPLC Report at 91.

<sup>256</sup> See David Cuillier, *Bigger Stick, Better Compliance? Testing Strength of Public Record Statutes on Agency Transparency in the United States* (June 26, 2019), available at <https://s3.documentcloud.org/documents/6182080/Sticks-and-Compliance-Cuillier.pdf>.

<sup>257</sup> See *id.* at 20.

<sup>258</sup> See U.S. Const. Art. I, § 8, cl. 17.

terms the SPLC’s “evidence” undercuts any assertion that Congressional control will somehow improve Alabama’s election system.

Finally, the story is similar for the SPLC’s broader indictment of Alabama’s practice of decentralizing its elections. Again, the SPLC fails to show how decentralization is somehow racially motivated (it is not), let alone explain why idiosyncrasies inherent in a decentralized election system demand federal intervention. The SPLC insists, for example, that “it is essential for election officials ... to be held accountable to voters,” but that “[w]ith 67 counties and three registrars per county, poor performance often goes unnoticed ... leaving voters at risk of disenfranchisement.”<sup>259</sup> But (as should be clear by now), the SPLC was unable to find even a single instance of this supposed “disenfranchisement” or a shred of evidence to support its claim that “poor performance often goes unnoticed.”

**Indeed, despite canvassing the State, the SPLC failed to provide even one declaration from someone unable to vote due to Alabama’s decentralized election system.**<sup>260</sup> Instead, the declarations suggest the following: allegedly no poll workers were waiting “outside to assist” one wheelchair-bound voter, who then waited in line and successfully voted (as noted above, by law she could have gone to the front of the line);<sup>261</sup> in 2016, a poll worker “fixed” an apparently mistaken “inactive” designation and a voter was allowed to vote;<sup>262</sup> many felons were allegedly not “notified ... about the change in the law that allows felons to vote”;<sup>263</sup> in one instance a registrar may have mistakenly provided inaccurate information to a felon attempting to register to vote;<sup>264</sup> and a voter avers he was mistakenly purged in 2018 but was ultimately able to vote within “10 or 15 minutes” and that he “had no issues” voting in the 2020 presidential election.<sup>265</sup> While some of these declarations relate inconveniences and the occasional mistake, nothing about them comes close to justifying federal encroachment into Alabama’s elections. **And the fact that these are the most damning indictments that an Alabama-based group as well-known and well-funded as the SPLC could muster suggests that Alabama has achieved an extraordinary level of success in ensuring safe, fair, and secure elections for all its citizens.**

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<sup>259</sup> SPLC Report at 89.

<sup>260</sup> See SPLC Ex. 8, 22, 39, 42.

<sup>261</sup> See SPLC Ex. 8 ¶ 4.

<sup>262</sup> See SPLC Ex. 22 ¶ 8.

<sup>263</sup> See SPLC Ex. 39 ¶ 7.

<sup>264</sup> See SPLC Ex. 42 ¶ 7.

<sup>265</sup> See SPLC Ex. 56 ¶¶ 4–7, 10.

## X. Alabama Complies with the Voting Rights Act

The last part of the SPLC's report concerns alleged Voting Rights Act violations in Alabama.<sup>266</sup> Like the rest of the report, this section tells only half the story (or less), and does so in a misleading manner.

### A. The Final Judgments the SPLC Lists Confirm Preclearance Is Not Warranted

The SPLC lists five lawsuits between 1996 and 2020 that it argues shows Alabama's continued need for preclearance. In fact, the list shows that such strong medicine is not warranted.

The report first lists *White v. Alabama*.<sup>267</sup> In that case, plaintiffs challenged Alabama's method of electing appellate judges statewide, claiming that the method resulted in too few black judges. (Alabama had been electing appellate judges statewide since its 1868 Reconstruction Constitution.) The district court purported to enter a "consent decree" in which the Democratic Attorney General consented to give plaintiffs all the relief they sought: packing appellate courts with black judges and eliminating seats of white judges as they rolled off the courts.<sup>268</sup> The decree was hotly contested by parties at the time, and, when a new Attorney General was elected, he contested the so-called "settlement" and "contend[ed] that his predecessor in office invited the district court to commit error."<sup>269</sup> The Eleventh Circuit rightly held that whatever the district court did, it was not a real consent decree; the objectors "were entitled as party plaintiffs to fully litigate their claims. They did not receive this opportunity."<sup>270</sup> The Court also held that the district court ordered relief that Section 2 does not allow: Alleged vote dilution is not cured by making an office an appointed position, and a decree that had the purpose of providing proportional representation to a racial group is unlawful when Section 2 expressly provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."<sup>271</sup>

*White* therefore does not involve a final judgment finding racial discrimination, but a scheme to obtain unprecedented and unlawful relief. And when Alabama had the opportunity recently to fully litigate its method of selecting appellate judges, she was completely exonerated in federal court.<sup>272</sup> There the court found, after extended discovery and a six-day bench trial, that **"Alabama's at-large, statewide system of**

<sup>266</sup> See SPLC Report at 96–108.

<sup>267</sup> 74 F.3d 1058 (11th Cir. 1996).

<sup>268</sup> *Id.* at 1064.

<sup>269</sup> *Id.* at 1068 n.35.

<sup>270</sup> *Id.* at 1076 (Black, J., concurring).

<sup>271</sup> *Id.* at 1071.

<sup>272</sup> *Ala. State Conf. for the NAACP v. Alabama*, -- F. Supp. 3d --, No. 2:16-CV-731-WKW, 2020 WL 583803 (M.D. Ala. Feb. 5, 2020).

electing appellate judges today is benign of racial hostility, either overt or covertly lurking in the recesses of § 2, and is not racially discriminatory either in its adoption or maintenance.”<sup>273</sup> It therefore makes no sense to argue that the *White* litigation is evidence that Alabama should be subjected to preclearance. It was a case where parties colluded to impose relief that the law did not allow, without findings of liability, on claims that the State later won in overwhelming fashion.

Nor does *Alabama Legislative Black Caucus v. Alabama* suggest that Alabama should have to preclear her laws.<sup>274</sup> While some Alabama legislative districts were declared to violate federal law, it was not because of any intent to harm minority voters. The three-judge district court, after a long bench trial, found that none of the State actors “acted with a racially discriminatory purpose or motive during the redistricting process.”<sup>275</sup> Rather, the issue was the Legislature’s misinterpretation of Section 5 of the Voting Rights Act. That section, when it applied to the State, prohibited any law that had the purpose or effect of “diminishing the ability of any” voter “on account of race or color ... to elect their preferred candidates of choice.”<sup>276</sup> The Legislature understood that to mean that if a district was, for example, 60% black voting age population, it should be redrawn with the same black voting strength to offer the same opportunity for black voters, because otherwise the black voters’ opportunity to elect their candidate of choice would be “diminished.” The Supreme Court held otherwise, holding **for the first time** that when a district’s black voting strength is lowered but black voters remain in the majority, their voting opportunity is not diminished. A mistaken interpretation of federal law, particularly in the ever-changing jurisprudence of redistricting, is not an indication that Alabama should be stripped of the right to pass its own laws without federal permission.

Finally, *People First v. Merrill*, as discussed above, involved challenges to Alabama’s photo ID and witness requirements for absentee voting and its lack of curbside voting during the COVID-19 pandemic. The district court granted plaintiffs an injunction, which the Supreme Court stayed—allowing Alabama’s laws to be enforced in their entirety. When the election ended, the case became moot.

Acknowledging this, the SPLC nevertheless contends: “No other court ultimately reached the merits and none of these decisions overturned the district court’s determination that the witness requirement violated the VRA.”<sup>277</sup> In one sense, that’s true. But it ignores that precedential decisions that become moot through no fault of the parties are typically vacated because they have become unreviewable.<sup>278</sup> The same consideration should apply here: It would be unfair in the extreme were the district

<sup>273</sup> *Id.* at \*17.

<sup>274</sup> 575 U.S. 254 (2015).

<sup>275</sup> 989 F.Supp.2d 1227, 1278 (M.D. Ala. 2013).

<sup>276</sup> 42 U.S.C. § 1973c.

<sup>277</sup> SPLC Report at 102.

<sup>278</sup> See generally *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

court's judgment in *People First* to count against Alabama for preclearance purposes when that decision could not be reviewed by higher courts through no fault of Alabama's. Indeed, that is particularly true here because the stay entered by the Supreme Court demonstrated "a fair prospect that a majority of the Court w[ould] vote to reverse the judgment" of the district court."<sup>279</sup>

The SPLC's reasoning also blatantly disregards the words of the district court, which went out of its way to limit its holding so it would not be used outside the COVID-19 context: "[T]he court emphasizes that its decision does not undermine the validity of the Challenged Provisions outside of the COVID-19 pandemic or beyond the November 3 election. Rather, the court grants only narrowly tailored relief to address the additional burdens facing a limited class of voters who are particularly susceptible to complications from contracting COVID-19."<sup>280</sup> The SPLC mistakenly relies on *People First* as though it were an ordinary VRA case, even though it was anything but.

## B. Alabama's Preclearance History Demonstrates the State's Success

Before explaining why the SPLC's preclearance objections are not what the SPLC chalks them up to be, it is worth revisiting how preclearance worked in Alabama.

Section 5 of the VRA required Alabama and its political subdivisions to obtain federal permission (i.e., "preclearance") before they could enforce any change in a voting-related standard, practice, or procedure.<sup>281</sup> Changes requiring preclearance included, but were not limited to:

- "Any change in qualifications or eligibility for voting."
- "Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting."
- "Any change in the boundaries of voting precincts or in the location of polling places."<sup>282</sup>

At the state level, the Attorney General monitored the Acts of the Legislature for "covered" changes, and state executive officials informed the Attorney General when they made a voting-related change. If a voting-related change possessed statewide effect, the Attorney General submitted it for preclearance. If a change was local in nature, the Attorney General informed the appropriate local official of her

<sup>279</sup> *Hollingsworth v. Perry*, 558 U.S. 1283, 190 (2010).

<sup>280</sup> *People First of Ala.*, 491 F. Supp. 3d 1076, 1093 (N.D. Ala. 2020).

<sup>281</sup> See 42 U.S.C. § 1973c; 28 C.F.R. § 51.1.

<sup>282</sup> 28 C.F.R. § 51.13(a), (b), (d).

obligation to seek preclearance. If a change originated at the local level (a municipal annexation, for example), the local officials were to identify and submit the change.

Once a voting change was identified, Alabama and its political subdivisions bore the burden of proving to the Department of Justice that the change was not “retrogressive”—that is, that the change did not discriminate against minorities in purpose or effect.<sup>283</sup> To satisfy the DOJ’s submission requirements, Alabama had to, at minimum, compile and submit 16 pieces of information.<sup>284</sup> In a nutshell, Alabama had to (1) detail the old and new practices, and the differences between the two, (2) detail the preclearance and litigation history of the old practice(s), (3) explain why Alabama wanted to make the change, and (4) explain how the change impacted minority voters.<sup>285</sup> The DOJ could also request supplemental information from the State, ranging anywhere from transcripts and DVDs of the State’s deliberative process to the name and race of every state legislator for the past 25 years.<sup>286</sup> The DOJ also considered outside comments and suggestions as part of its final consideration.<sup>287</sup>

Submission times varied. Routine preclearance submissions, such as setting a special election date to fill a legislative vacancy, could be generated in hours. Other submissions could take days, weeks, or even months to research and draft. Until preclearance was granted by the folks in D.C., the new practice—however beneficial or urgent—could not be enforced.<sup>288</sup> **Between 1990 and 2008, Alabama and its sub-jurisdictions submitted 6,126 preclearance submissions to DOJ.**<sup>289</sup> This was a costly and time-consuming endeavor that routinely stalled the enforcement of necessary, and racially benign, legislative Acts for well over a year.<sup>290</sup> And it was an endeavor that only a handful of States and local jurisdictions had to bear.

Turning to the SPLC report, the SPLC asserts that, beginning in 1969, the DOJ interposed more than 100 objections to submitted changes from Alabama.<sup>291</sup> Then it discusses four objections that came between 1998 and 2008.<sup>292</sup> In doing so, the report omits two critical points along the way. First, the Supreme Court has explained that

<sup>283</sup> 52 U.S.C. § 10304; *see also* 28 C.F.R. §§ 51.1-51.67 (preclearance guidelines). The State also had the option of seeking preclearance from a three-judge panel of the U.S. District Court for the District of Columbia. 52 U.S.C. § 10304(a). Virtually all submissions were made to the DOJ, however, because the administrative route was typically faster and less costly.

<sup>284</sup> *See* 28 C.F.R. § 51.27.

<sup>285</sup> *Id.*

<sup>286</sup> *See* 28 C.F.R. § 51.37(a).

<sup>287</sup> *See* 28 C.F.R. § 51.53.

<sup>288</sup> *See Clark v. Roemer*, 500 U.S. 646, 652-53 (1991); 28 C.F.R. § 51.10.

<sup>289</sup> *See* NAMUDNO Brief 1a-14a (reproducing DOJ’s “Submission Tracking and Processing (STAPS) Statistics Report” for years 1990 through 2008).

<sup>290</sup> For an in-depth discussion of just some of the absurdities and costs imposed by preclearance, *see* NAMUDNO Brief 17-39.

<sup>291</sup> SPLC Report at 15.

<sup>292</sup> *Id.* at 103-06.



the VRA “imposes **current** burdens and must be justified by **current** needs.”<sup>293</sup> **For that reason, it is important to recognize that the four objections the SPLC highlights are not simply four of many objections of recent vintage selected for discussion; they are the last four objections interposed against a change originating in Alabama.** In fact, one must go back nearly **three decades** to find a sustained objection against the State itself or even a number of objections against sub-jurisdictions.

This is verified by the Department of Justice’s webpage, which lists not just objections directed at the State itself, but also objections directed to sub-jurisdictions and even political parties which are not government actors.<sup>294</sup> The list is lengthy to be sure. But it is also mostly old. **The last statewide objection that was sustained occurred in 1994, and there were few objections at all between then and now.** The last objection raised was from 2008—nearly five years before the *Shelby County* decision. This is not the “insidious and pervasive evil” and “unremitting and ingenious defiance of the Constitution”<sup>295</sup> that justified the original preclearance regime.

State of Alabama 01/31/1994 (pdf)	Amendment 425 to the Alabama Constitution, insofar as it provides that a referendum on a local constitutional amendment may not be held unless it is first approved by the Local Constitutional Amendment Commission (89-1439)	
State of Alabama 04/14/1994 (pdf)	The changes for the courts of criminal and civil appeals and the supreme court occasioned by Act Nos. 602 and 987 (1969), 75 (1971), and 346 (1993) in the context of the at-large method of electing these courts (93-2322; 93-3195-96)	Withdrawn 3-18-96
Tallapoosa County 02/06/1998 (html   pdf)	Redistricting plan (97-1021)	
Alabaster (Shelby Cty.) 08/16/2000 (html   pdf)	Annexations (Ordinance Nos. 94-338 and 96-410) (2000-2230)	
Mobile County 01/08/2007 (html   pdf)	Change in method of election for filling vacancies occurring on the Mobile County Commission from special election to gubernatorial appointment (2006-6792)	01/08/2007
City of Calera (Shelby Cty.) 8/25/2008 (html   pdf)	One hundred and seventy seven annexations and a redistricting plan (2008-1621)	

*Updated May 18, 2020*

Second, the SPLC discusses the 2007 objection in Mobile County, concluding that Alabama “failed to carry its burden, and the DOJ prevented the switch from special elections to gubernatorial appointment to fill any District 1 vacancy on the Mobile

<sup>293</sup> *NAMUDNO*, 557 U.S. at 203 (emphasis added).

<sup>294</sup> See <https://www.justice.gov/crt/voting-determination-letters-alabama>.

<sup>295</sup> *Katzenbach*, 383 U.S. at 309.



County Commission.”<sup>296</sup> Not quite. **Though the SPLC omits this part, the DOJ withdrew its objection after the U.S. Supreme Court ruled that preclearance was not required.**<sup>297</sup>

To be fair, the SPLC’s omission could be because the DOJ website is also mislabeled and misleading; it too fails to recognize that the 2007 objection was a statewide objection that the DOJ was forced to withdraw. On its webpage, the DOJ describes the 2007 objection as a “Change in method of election for filling vacancies occurring on the Mobile County Commission from special election to gubernatorial appointment.” As the Supreme Court explained, however, Alabama’s baseline practice when Section 5 took effect was gubernatorial appointment, and a local law applicable to Mobile County that instead required a special election was only enforced once, at which time it was quickly challenged and held unconstitutional as a matter of State law.<sup>298</sup> Thus, although the State trial court had allowed an election to proceed under the invalid law, the Supreme Court did not allow that error to shift the baseline from gubernatorial appointment to a special election.<sup>299</sup> The result, the Court held, is that the Governor’s 2005 appointment to fill a vacancy on the Mobile County Commission was not a change in practice subject to the preclearance requirement.<sup>300</sup>

The same day that the Supreme Court ruled, the State asked the DOJ to withdraw its objection. Two months later, it did:

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<sup>296</sup> SPLC Report at 105.

<sup>297</sup> See *Riley v. Kennedy*, 553 U.S. 406 (2008).

<sup>298</sup> *Id.* at 406, 414, 420.

<sup>299</sup> *Id.* at 420–22, 426.

<sup>300</sup> *Id.* at 421–22.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 23, 2008

The Honorable Troy King  
Attorney General  
State of Alabama  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130

Dear Attorney General King:

This refers to your May 27, 2008, request that the Attorney General withdraw his January 8, 2007, objection to a submission under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, of the method for filling vacancies on the Mobile County Commission in Mobile County, Alabama. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. § 51.45).

Your request to withdraw the objection notes the May 27, 2008, decision of the United States Supreme Court in *Riley v. Kennedy*, 128 S. Ct. 1970 (No. 07-77) (2008). The Supreme Court reversed an August 18, 2006 decision of a three-judge federal district court which had concluded that the decisions of the Alabama Supreme Court in *Stokes v. Noonan*, 534 So. 2d 237 (Ala. 1988) and *Riley v. Kennedy*, 928 So. 2d 1013 (Ala. 2005) had led to an unprecleared change affecting voting under Section 5. The Supreme Court held that, in the circumstances of this case, the two Alabama Supreme Court decisions had effectuated no change in the method of filling vacancies on the Mobile County Commission.

Because the United States Supreme Court has held that the matter which is the subject of this submission does not represent any change from the prior law or practice, then no determination by the Attorney General is required or appropriate under Section 5. See 28 C.F.R. §§ 51.2 and 51.35. Accordingly, we have reconsidered our earlier objection in this matter, and pursuant to 28 C.F.R. § 51.48, the January 8, 2007, objection to the method for filling vacancies on the Mobile County Commission is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See 28 C.F.R. § 51.41.

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Since the Section 5 status of the method for filling vacancies on the Mobile County Commission is before the court in *Kennedy v. Riley*, No. 2:05cv1100 (M.D. Ala.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

Grace Chung Becker  
Acting Assistant Attorney General

cc: Court and counsel of record

Accordingly, there has not been a sustained objection to a statewide change in Alabama in the last two-and-a-half decades, and one must go back nearly three decades to find a number of objections to changes from sub-jurisdictions. This history plainly does not support reinstating the preclearance requirement.

### **C. Occasional Settlements and Consent Decrees by Municipalities and Subdivisions Do Not Evidence Widespread VRA Violations Warranting Preclearance**

Finally, in its effort to show ongoing, widespread violations of the Voting Rights Act warranting the reimposition of preclearance, the SPLC trots out two recent settlement agreements and four old consent decrees involving certain cities and counties in Alabama.<sup>301</sup> None of them were statewide or involved the State itself, yet the report does not confine its argument for preclearance to these subdivisions. The four consent decrees predated *Shelby County*, three of them by well over a decade. The two settlement agreements involved alleged Section 2 violations by the City of Pleasant Grove and the Jefferson County Board of Education; both settlements concerned the use of at-large voting districts for local elections.<sup>302</sup> More important, both settlements demonstrate that preclearance is not needed to remedy potential VRA violations and serve as good examples of what one might hope a city or county would do when confronted with potential problems. Rather than encourage settlements, the SPLC would seek to penalize States and subdivisions that settle by wielding the settlements as evidence of nefarious behavior justifying preclearance. The perverse message is clear: If a State or subdivision works with plaintiffs to resolve problems, it will be punished by having its very compromise used against it. This is no reason to put the State of Alabama back under the heavy thumb of preclearance.

## **Conclusion**

The SPLC and its partners—albeit unintentionally—have done Alabama a great service. By preparing the definitive case for reimposing preclearance on Alabama, they have made clear that there is no serious case to be made.

In 1965, Congress had before it a record of “pervasive,” “flagrant,” “widespread,” and “rampant” discrimination,<sup>303</sup> and only 19.3% of black Alabamians were registered to vote, compared to 69.2% of whites.<sup>304</sup> Today, black and white Alabamians register and vote at similar rates. And to make its case for widespread discrimination, the SPLC has to rely on a voter who was not initially recognized at his polling place, but who

<sup>301</sup> See SPLC Report at 106–10.

<sup>302</sup> See *Ala. State Conf. of NAACP v. City of Pleasant Grove*, No. 2:18-CV-02056-LSC, 2019 WL 5172371 (N.D. Ala. Oct. 11, 2019); *Jones v. Jefferson Cty. Bd. of Educ.*, No. 2:19-CV-01821-MHH, 2019 WL 7500528 (N.D. Ala. Dec. 16, 2019).

<sup>303</sup> *Katzenbach*, 383 U.S. at 308, 315, 331.

<sup>304</sup> *Shelby County v. Holder*, 570 U.S. 529, 548 (2013).

asked the poll worker to check again and then voted; another voter who sued Alabama over his fears of running out of printer ink before he could print a copy of his photo ID and an absentee ballot application; and another voter who claimed she could not safely find two people to witness her sign her absentee ballot envelope, though she was regularly taking her dog to the groomer. Whatever that is, it is not Jim Crow.

In 1965, Congress confronted poll taxes and literacy tests. Today, the SPLC's chief complaint about Alabama law is a photo ID requirement that has been upheld by both federal courts that have considered its lawfulness. Moreover, over the two years of litigation concerning the law, challengers could not produce a single voter in Alabama who lacked an ID and could not get one.

In 1965, Congress had to consider the likes of George Wallace and Bull Connor. Today, the SPLC identifies Secretary of State Merrill as a modern-day “champion[]” of “voter suppression.”<sup>305</sup> The evidence? Well, not his emergency rule in 2020 expanding absentee voting during the pandemic. And not his operation of a mobile photo ID unit that has made hundreds of treks throughout the State to offer free photo IDs at locations convenient to voters.<sup>306</sup> No, the main “evidence” is Secretary Merrill's efforts to fight voter fraud.<sup>307</sup> In the SPLC's world, voter fraud is a “myth,” and men apparently are angels who would never dream of trying to use underhanded means to gain political power. But, as documented above, in the press, and in numerous judicial decisions, voter fraud has occurred repeatedly in Alabama, and it has harmed black and white Alabamians alike. The SPLC is the one dealing in myths.

It is thus clear that while Alabama, like our Union, is not perfect, “[t]hings have changed in the South”—dramatically and for the better.<sup>308</sup> The misleading attempts by the SPLC and its partners to deny this reality merely confirm it. Because the exceptional conditions that once justified preclearance are now passed, that exceptional remedy should be left behind as well.

<sup>305</sup> SPLC Report at 82.

<sup>306</sup> *GBM II*, 992 F.3d at 1311–12.

<sup>307</sup> See SPLC Report at 30–31, 82–83.

<sup>308</sup> *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009) (majority opinion); accord *id.* at 226–27 (Thomas, J., concurring in the judgment in part and dissenting in part).



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